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18 **UNITED STATES BANKRUPTCY COURT  
19 EASTERN DISTRICT OF WASHINGTON**

20 In re:

21 ICAP ENTERPRISES, INC., *et al.*,

22 Debtors.<sup>1</sup>

23 Chapter 11

24 Lead Case No. 23-01243-WLH11  
25 Jointly Administered

26 **MODIFIED SECOND AMENDED  
27 DISCLOSURE STATEMENT FOR  
THE JOINT CHAPTER 11 PLAN  
OF LIQUIDATION OF ICAP  
ENTERPRISES, INC. AND ITS  
AFFILIATED DEBTORS  
PROPOSED BY THE DEBTORS**

28 <sup>1</sup> The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

29 **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
30 FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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AND OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

## DISCLAIMER

THIS DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE *MODIFIED SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF ICAP ENTERPRISES, INC. AND ITS AFFILIATED DEBTORS PROPOSED BY THE DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS*, WHICH BANKRUPTCY PLAN THE DEBTORS ARE SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT REGARDING THE FAIRNESS OR THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN DOCUMENTS RELATING TO THE PLAN. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.

THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE DEBTORS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERIES UNDER THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT CERTAIN EVENTS DO OR DO NOT OCCUR.

MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION

1           **THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN**  
2 **ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND**  
3 **BANKRUPTCY RULE 3016 AND NOT NECESSARILY IN ACCORDANCE**  
4 **WITH FEDERAL OR STATE SECURITIES LAWS OR ANY OTHER NON-**  
5 **BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN**  
6 **APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES**  
7 **AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL,**  
8 **STATE, LOCAL, OR FOREIGN REGULATORY AGENCY, NOR HAS THE**  
9 **SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY**  
10 **OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS**  
11 **DISCLOSURE STATEMENT. ALL PERSONS OR ENTITIES SHOULD**  
12 **EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT**  
13 **OF THE SPECIFIC PURPOSE FOR WHICH THE DOCUMENTS WERE**  
14 **PREPARED.**

15           **THE DEBTORS MAKE STATEMENTS IN THIS DISCLOSURE**  
16 **STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING**  
17 **STATEMENTS UNDER THE FEDERAL SECURITIES LAWS.**  
18 **STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT**  
19 **GUARANTEES AND REPRESENT THE DEBTORS’ ESTIMATES AND**  
20 **ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE**  
21 **MADE AND INVOLVE KNOWN AND UNKNOWN RISKS,**  
22 **UNCERTAINTIES, AND OTHER UNKNOWN FACTORS THAT COULD**  
23 **IMPACT THE DEBTORS’ PLAN OR DISTRIBUTIONS THEREUNDER.** IN  
24 **ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH**  
25 **RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER**  
26 **STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,”**  
27 **“EXPECTS,” “INTENDS,” “ANTICIPATES,” “PLANS,” OR SIMILAR**  
28 **TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS**  
29 **AND OTHER INTERESTED PARTIES SHOULD ALSO REVIEW THE**  
30 **SECTION OF THIS DISCLOSURE STATEMENT ENTITLED “RISK**  
31 **FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY**  
32 **AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.**

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38           **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**  
39           **FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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## **EXHIBITS TO THE DISCLOSURE STATEMENT**

**Exhibit A: Joint Chapter 11 Plan of Liquidation**

**Exhibit B: Liquidation Analysis**

**Exhibit C: Recovery Analysis**

## **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

## GENERAL OVERVIEW AND SUMMARY

This disclosure statement (the “Disclosure Statement”) describes in detail the historical background that led to the chapter 11 cases of iCap Enterprises, Inc. and its affiliated debtors and debtors in possession (collectively, “iCap” or the “Debtors”), explains what has happened in the months since the Debtors commenced their bankruptcy cases, and sets forth the treatment of creditors in the *Modified Second Amended Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and Official Committee of Unsecured Creditors* (as amended, modified, or supplemented from time to time pursuant to its terms, the “Plan”). This overview and summary highlights the main points discussed in the Disclosure Statement, and should be read in conjunction with the remainder of the Disclosure Statement and Plan. A copy of the Plan is attached hereto as **Exhibit A.**<sup>2</sup> This general overview and summary is qualified by the express terms of the Plan.

**Provided herewith as a separate document is a statement of the Unsecured Creditors’ Committee in support of the Plan, which should be reviewed by all Investors, Creditors, and other parties in interest.**

The Debtors were founded in 2007 by Chris Christensen (“Christensen”) to invest in real estate opportunities in the Pacific Northwest. The Debtors, working collaboratively with the unsecured creditors’ committee (the “Unsecured Creditors’ Committee”) appointed in these chapter 11 cases (the “Chapter 11 Cases”), expended significant efforts to analyze the facts and circumstances surrounding the failure of the iCap business and potential causes of action related to such failure, and both have independently determined that the iCap business enterprise operated as a “Ponzi scheme” during the prepetition period.<sup>3</sup>

**Christensen disagrees with the Debtors’ and Unsecured Creditors’ Committee’s conclusions set forth herein, including any allegations of wrongdoing on his part, which he believes will be subject to further dispute.**

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings provided to such terms in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan will control and govern. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, any other order entered in the Chapter 11 Cases, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence, except as otherwise expressly stated in the Plan; *provided, however,* that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

<sup>3</sup> The Debtors’ history, prepetition operations, and circumstances leading to the Debtors’ Chapter 11 Cases, including further facts relating to the Ponzi scheme perpetuated by Christensen, are discussed further below in Article II and Article IV.

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Following the revelation of the massive Ponzi scheme, the Debtors, together with the Unsecured Creditors' Committee, have worked diligently to maximize recoveries for the Debtors' Investors and other Creditors. The Debtors and the Unsecured Creditors' Committee, through months of open cooperation, information gathering, and negotiation for the benefit of all Investors, reached a global resolution, embodied in the proposed Plan, aimed at: (i) mitigating the damage inflicted by Christensen (and others) having operated the Debtors as a Ponzi scheme; and (ii) developing a level playing field that attempts to treat all aggrieved Investors equally and fairly.

Significantly, the proposed Plan is a "single pot" plan, meaning that under the Plan, generally, all of the assets and liabilities of all the Debtors will be pooled and consolidated for distribution purposes. This is legally referred to under the Plan as "substantive consolidation."<sup>4</sup> As a result of such substantive consolidation, among other things:

- Creditors of any Debtor entity are treated as if they have a Claim against the entire iCap enterprise, rather than a particular Debtor.
- Any and all purported equity interests of an Investor in any Debtor shall be automatically cancelled and extinguished as of the Effective Date, and deemed and treated as Investor Claims pursuant to the Plan, regardless of the prepetition designations or labels used by the Debtors and/or Investors.
- Investors will not receive a "premium" or other benefit based on the type of investment they held. Rather, all Investor Claims will be calculated in the same manner, and each Investor will receive a proportional recovery from the iCap Trust based on such Investor's Allowed Claim amount.
- Under the Plan, Investors are free to pursue recoveries that they may own directly against third parties. A couple of examples would be claims against an Investor's professional advisors or retirement servicers. These claims are defined in the Plan as Individual Investor-Specific Claims. Individual Investor-Specific Claims are those owned by an Investor that are **not** owned by the Debtors and, in turn, the iCap Trust under bankruptcy law. The Plan defines the claims that will be exclusively owned by the iCap Trust with

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<sup>4</sup> By way of example, if Entity A holds \$100 of assets and owes \$0 of liabilities, and Entity B holds \$0 of assets and owes \$100 of liabilities, and if those two entities are substantively consolidated, the resulting entity will hold \$100 of assets and owe \$100 of liabilities.

the exclusive right to pursue those claims. Specifically, the Plan defines these claims as Avoidance Actions and Causes of Action.

- If an Investor has questions about whether a claim is an Individual Investor-Specific Claim that the Investor can pursue directly, or an Avoidance Action or Cause of Action that only the iCap Trust can pursue, the Investor is encouraged to seek legal advice on the issue.
  - In order to keep Investors informed of the iCap Trust's pursuit of Avoidance Actions and Causes of Action, the iCap Trustees will provide a quarterly report to Investors summarizing the recovery actions the iCap Trust has engaged in during the quarter and whether the iCap Trust is abandoning any specific Avoidance Actions or Causes of Action that it has determined it will not pursue, thus allowing Investors to pursue such actions, at their option.
  - If an Investor does successfully recover from third parties, the Plan obligates the Investor to report that information within thirty (30) days of the recovery to the iCap Trustees. (*See Plan, Article III.C.2.b.*) The Plan also obligates Investors to respond within twenty-one (21) days to requests for information from the iCap Trustees. (*See Plan, Article III.C.1.e.*) If an Investor fails to comply with these requirements, the Plan provides that that Investor's Claim may be disallowed, in the iCap Trustees' discretion.

**The following disclosure and information is not intended in any way to provide tax advice to any Investor or third party. It is provided to identify what is reasonably believed to be a substantial benefit to the iCap Investors.**

Following the Madoff Ponzi scheme, the Internal Revenue Service (the “IRS”) enacted special rules that address the possibility for victims of Ponzi schemes to deduct losses for income tax purposes pursuant to 26 U.S.C. § 165 that may allow Ponzi victims to deduct unlimited losses as a theft loss, instead of capital losses from an investment. Capital losses are normally limited to a maximum of \$3,000 per year. Section 165(a) of the Internal Revenue Code of 1986, as amended (the “IRC”) allows taxpayers to deduct theft losses sustained during the tax year in which the theft loss is discovered, to the extent not compensated by insurance or otherwise. Investors will need to consult their tax advisors to determine each of their specific rights under IRC section 165, if any.

In this case, Investors in iCap are owed an estimated \$250,000,000. While deductions for losses will not begin to make these Investors whole, the ability to

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1 deduct losses suffered in a Ponzi scheme, to the extent available, will likely provide  
2 a substantial and important benefit to the investor community.

3 To effectuate Distributions to Investors and other Creditors, the Plan provides  
4 for the creation of the iCap Trust, a liquidating trust, which will own the Estates' remaining assets and will sell or otherwise dispose of those assets to generate cash, and will distribute that (and other) cash to Creditors (including to Investors). Significantly, the iCap Trust will own all of the Debtors' litigation claims against third parties and may generate cash through prosecution or settlement of those claims. Cash will be distributed by the iCap Trust to Investors and other Creditors over time at the direction of the iCap Trustees.

As further detailed in the Plan, the Plan contemplates that:

- Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Claims, and Allowed Secured Claims are all unimpaired under the Plan. The Plan provides for the satisfaction in full of such Claims as described in Article III of the Plan.
- Holders of Allowed Investor Claims will receive (i) on the later of the Effective Date and thirty (30) calendar days following the date on which such Investor Claim becomes an Allowed Investor Claim, one (1) Class A iCap Trust Interest for each dollar of Allowed Investor Class A Claims and one (1) Class B iCap Trust Interest for each dollar of Allowed Investor Class B Claims held by the applicable Investor (any resulting fractional iCap Trust Interests will be rounded to the nearest hundredth of such iCap Trust Interest), and (ii) the other consideration provided for in the Investor Claims Special Provisions set forth in Article III.C.1 of the Plan.
- Holders of Allowed General Unsecured Claims will receive on the later of the Effective Date and thirty (30) calendar days following the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim, one (1) Class A iCap Trust Interest for each dollar of Allowed General Unsecured Class A Claims and one (1) Class B iCap Trust Interest for each dollar of Allowed General Unsecured Class B Claims held by the applicable Holder (any resulting fractional iCap Trust Interests will be rounded to the nearest hundredth of such iCap Trust Interest).
- Holders of Allowed Subordinated Claims will retain a residual right to receive Available Cash that remains in the iCap Trust after the final administration of all iCap Trust Assets, and the complete satisfaction of all

1 senior payment rights within the iCap Trust Interests Waterfall, including  
2 satisfaction of all Investor Class B Claims and General Unsecured Class B  
3 Claims.

4 Critically, the Plan Proponents have ensured that Creditors continue to have  
5 an advisory role in connection with certain key decisions that will be made by the  
6 iCap Trust by creating the iCap Trust Supervisory Board to serve in conjunction with  
7 the iCap Trustees. Lance Miller, the Debtors' current Chief Restructuring Officer,  
8 and Seth Freeman will serve as the initial iCap Trustees. The initial members of the  
9 iCap Trust Supervisory Board will be Lilian Tan, Thomas Temple, and Jay Kornfeld  
10 of Bush Kornfeld LLP.

11 **ARTICLE X OF THE PLAN CONTAINS RELEASE, EXCULPATION,  
12 AND INJUNCTION PROVISIONS, WHICH ARE DISCUSSED IN ARTICLE  
13 V.I OF THIS DISCLOSURE STATEMENT. YOU SHOULD REVIEW AND  
14 CONSIDER THE PLAN CAREFULLY BECAUSE IT MAY AFFECT YOUR  
15 RIGHTS.**

16 The Plan Proponents understand the precarious financial position that many  
17 Investors are in as a result of the Ponzi scheme. The Plan Proponents believe that the  
18 settlement reflected in the Plan, which is the result of extensive negotiations with  
19 significant Investor input, represents the best outcome of these unfortunate  
20 circumstances, and importantly, provides the best prospect for Investors and other  
21 Creditors to receive Distributions as soon as reasonably possible. **The Unsecured  
22 Creditors' Committee supports the Confirmation of the Plan.**

23 **QUESTIONS AND ADDITIONAL INFORMATION**

24 If you would like to obtain copies of this Disclosure Statement, the Plan, the  
25 Plan Supplement, or any of the documents attached hereto or referenced herein, or  
26 have questions about the solicitation and voting process or the Chapter 11 Cases  
27 generally, please contact BMC Group, Inc. by (i) visiting the Debtors' case website  
28 at <https://cases.creditorinfo.com/iCap>, (ii) calling BMC at (888) 909-0100, or  
[\(iii\) sending email correspondence to iCap@bmccgroup.com \(please reference "iCap"](mailto:iCap@bmccgroup.com)  
in the subject line).

## ARTICLE I. INTRODUCTION

The purpose of this Disclosure Statement is to enable Creditors (including Investors) whose Claims are Impaired under the Plan and who are entitled to vote on the Plan to make an informed decision when exercising their right to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding the Debtors' prepetition operating and financial history, their reasons for seeking protection under chapter 11 of the Bankruptcy Code, the course of these Chapter 11 Cases, and the anticipated orderly liquidation of the Estate Assets. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting and election procedures that Creditors entitled to vote under the Plan must follow for their votes to be counted.

## A. Overview of the Plan<sup>5</sup>

## 1. General Structure of the Plan

A bankruptcy plan is a vehicle for satisfying the rights of holders of claims against and equity interests in a debtor. Consummation of a plan is the overriding purpose of a chapter 11 case. Upon confirmation and effectiveness, a plan becomes binding on the debtor and all of its creditors and equity interest holders.

In these Chapter 11 Cases, the Plan contemplates a liquidation of each of the Debtors and is therefore referred to as a “plan of liquidation.” The Debtors’ assets largely consist of interests in real properties, Cash, and the iCap Trust Actions under the Plan. The iCap Trust Actions include all Avoidance Actions and Causes of Action held by the Debtors or the Estates and any Causes of Action that are contributed to the iCap Trust as Contributed Claims, in each case as against any Person that is not a Released Party.

## 2. Material Terms of the Plan

The Plan provides for the creation of the iCap Trust, as well as the appointment of the iCap Trustees, who will administer and liquidate all remaining property of the Debtors and their Estates, subject to the supervision and oversight of the iCap Trust Supervisory Board, all as described more fully in Article V.D of this Disclosure

<sup>5</sup> The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.

**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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1 Statement. The Plan also provides for Distributions to be made to certain Holders of  
2 Administrative Expense Claims, Priority Tax Claims, Priority Claims, Secured  
3 Claims, Investor Claims, General Unsecured Claims, and potentially Subordinated  
4 Claims, and for the funding of the iCap Trust. The Plan also provides for substantive  
5 consolidation of the Debtors and their Estates as of the Effective Date. Finally, the  
6 Plan provides for the approval of the Exit Financing, the dissolution and wind-up of  
the affairs of the Debtors, and the administration of any remaining assets of the  
Debtors' Estates by the iCap Trustees.

7       3.     Summary of Treatment of Claims and Equity Interests Under the Plan

8       The table below summarizes the classification and treatment of Claims and  
9     Equity Interests under the Plan.

10      **THE PROJECTED RECOVERIES FOR THE CLAIMS SET FORTH IN  
11     THE TABLE BELOW ARE ESTIMATES ONLY AND ACTUAL  
12     RECOVERIES MAY DIFFER. FOR A COMPLETE DESCRIPTION OF THE  
13     DEBTORS' CLASSIFICATION AND TREATMENT OF CLAIMS AND  
EQUITY INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN.**

CLASS	DESCRIPTION	IMPAIRED / UNIMPAIRED	ENTITLED TO VOTE?	PROJECTED RECOVERY <sup>6</sup>
Class 1	Priority Claims	Unimpaired	No	100%
Class 2	Secured Claims	Unimpaired	No	100%
Class 3	Investor Claims	Impaired	Yes	1–34%
Class 4	General Unsecured Claims	Impaired	Yes	1–34%
Class 5	Subordinated Claims	Impaired	No	0%
Class 6	Equity Interests	Impaired	No	0%

23      **THE PLAN PROPONENTS BELIEVE THAT THE PLAN IS FAIR AND  
24     EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS  
25     IN THE BEST INTERESTS OF THE DEBTORS AND THEIR**

26      

---

<sup>6</sup> The projected recoveries to Creditors set forth in this Disclosure Statement estimate a range of \$25 million to \$125  
27     million for the ultimate recoveries on the iCap Trust Actions. The potential proceeds of the iCap Trust Actions,  
however, are unpredictable and highly contingent. Among other things, although the Plan Proponents believe that  
strong litigation claims may exist, the ability to collect any judgment on those claims remains unknown at this time.

1           **CONSTITUENTS. FOR THESE REASONS, THE PLAN PROPONENTS**  
2           **URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO**  
3           **TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE**  
4           **PLAN.**

5           **THE PLAN IS THE PRODUCT OF EXTENSIVE NEGOTIATION**  
6           **WITH, AND IS SUPPORTED BY, THE UNSECURED CREDITORS'**  
7           **COMMITTEE APPOINTED IN THE CHAPTER 11 CASES, WHO WILL BE**  
8           **PROVIDING THEIR OWN STATEMENT SIMILARLY URGING**  
9           **HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY**  
10          **RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN.**

11          **B. Plan Voting Instructions and Procedures**

12          1. Voting Rights

13          Under the Bankruptcy Code, only classes of claims or equity interests that are  
14          “impaired” and that are not deemed as a matter of law to have rejected a plan under  
15          Bankruptcy Code section 1126 are entitled to vote to accept or reject such plan. Any  
16          class that is “unimpaired” is not entitled to vote to accept or reject a plan and is  
17          conclusively presumed to have accepted such plan. As set forth in Bankruptcy Code  
18          section 1124, a class is “impaired” if the legal, equitable, or contractual rights  
19          attaching to the claims or equity interests of that class are modified or altered by the  
20          proposed plan. Holders of claims or equity interests within an impaired class are  
21          entitled to vote to accept or reject a plan if such claims or interests are “allowed”  
22          under Bankruptcy Code section 502.

23          Under the Bankruptcy Code, acceptance of a plan by a class of claims is  
24          determined by calculating the number and the amount of allowed claims voting to  
25          accept such plan. Acceptance by a class of claims requires more than one-half of the  
26          number of total allowed claims voting in the class to vote in favor of the plan and at  
27          least two-thirds in dollar amount of the total allowed claims voting in the class to  
28          vote in favor of the plan; only those non-insider holders that actually vote to accept  
29          or reject the plan are counted for purposes of determining whether these dollar and  
30          number thresholds are met. Under the Plan, a Class of Claims will have voted to  
31          accept the Plan only if two-thirds in amount and a majority in number that actually  
32          vote cast their Ballots in favor of acceptance.

33          Only Holders of Claims in Class 3 (Investor Claims) and Class 4 (General  
34          Unsecured Claims) as of August 26, 2024 (the “Voting Record Date”) may vote to  
35          accept or reject the Plan. Pursuant to the Plan, Claims in Class 3 (Investor Claims)

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1 and Class 4 (General Unsecured Claims) are impaired by, and entitled to receive a  
2 Distribution under, the Plan, and only the Holders of Claims in those Classes that are  
3 Allowed Claims or have been deemed allowed for voting purposes are entitled to  
vote to accept or reject the Plan.

4 Pursuant to the Plan, Claims in Class 1 (Priority Claims) and Class 2 (Secured  
5 Claims) are unimpaired by the Plan, and such Holders are deemed to have accepted  
the Plan and are therefore not entitled to vote on the Plan.  
6

7 The Plan Proponents have determined not to solicit the votes of Holders of any  
8 Subordinated Claims in Class 5, and such Holders shall be deemed to have rejected  
the Plan and, therefore, such Holders are not entitled to vote on the Plan. Pursuant to  
9 the Plan, Equity Interests in Class 6 will not receive or retain any property under the  
Plan on account of such Equity Interests, and are therefore deemed to reject the Plan  
10 and are not entitled to vote on the Plan.

11 A vote on the Plan may be disregarded if the Bankruptcy Court determines,  
12 pursuant to Bankruptcy Code section 1126(e), that it was not solicited or procured in  
good faith or in accordance with the provisions of the Bankruptcy Code.  
13

## 14 2. Solicitation Materials

15 The Debtors, with the approval of the Bankruptcy Court, have engaged BMC  
16 Group, Inc. (the “Voting Agent”) to serve as the voting agent to process and tabulate  
17 Ballots and to generally oversee the voting process. The following materials  
constitute the solicitation package (the “Solicitation Package”):

- 18 – This Disclosure Statement, including the Plan and all other exhibits and  
schedules thereto;
- 19 – The Bankruptcy Court order approving this Disclosure Statement (the  
“Disclosure Statement Order”) (excluding exhibits);
- 20 – The notice of, among other things, (i) the date, time, and place of the  
hearing to consider Confirmation of the Plan and related matters, (ii) the  
deadline to vote on the Plan, and (iii) the deadline for filing objections to  
Confirmation of the Plan (the “Confirmation Hearing Notice”);
- 21 – For Holders of Claims in Class 3 (Investor Claims) or Class 4 (General  
Unsecured Claims), one or more Ballots, to be used in voting to accept or  
to reject the Plan and the applicable instructions to vote on the Plan (the  
22  
23  
24  
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26  
27  
28

- 1           “Voting Instructions”) and, in the case of Investors, instructions on how to  
2 elect to contribute their Contributing Claims to the iCap Trust;<sup>7</sup>  
3       – A pre-addressed, postage pre-paid return envelope; and  
4       – Such other materials as the Bankruptcy Court may direct or approve.

5           The Plan Proponents, through the Voting Agent, will distribute the Solicitation  
6 Package in accordance with the Disclosure Statement Order. In accordance with the  
7 *Order Granting Debtors’ Ex Parte Motion for Entry of Order: (I) Limiting Scope of  
Notice; (II) Authorizing Service to Investors by Email; and (III) Granting Related  
Relief* [ECF No. 63], the Solicitation Package will be served via email on the  
8 Investors. The Solicitation Package, exclusive of Ballots, is also available free of  
charge on the Debtors’ case website located at <https://cases.creditorinfo.com/iCap>.

9           On or before the date that is fourteen (14) calendar days prior to the Voting  
10 Deadline, the Plan Proponents will file a Plan Supplement, which will contain  
11 additional information relating to the Plan and its implementation that you are  
12 encouraged to read, including, without limitation, the iCap Trust Agreement and the  
13 Exit Financing documents. As the Plan Supplement is updated or otherwise modified,  
14 it will be made available free of charge at the Debtors’ case website at  
<https://cases.creditorinfo.com/iCap>.

15           If you are the Holder of a Claim and believe that you are entitled to vote on  
16 the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if  
17 you have any questions concerning voting procedures, you should contact the Voting  
18 Agent by emailing [iCap@bmccgroup.com](mailto:iCap@bmccgroup.com) or calling the Voting Agent at (888) 909-  
0100.

19           You are encouraged to read all of the materials in the Solicitation Package in  
20 their entirety, including, without limitation, the Disclosure Statement Order and the  
21 Voting Instructions for important information about how and when to cast your vote.

22           If your Claim is subject to a pending claim objection and you wish to vote on  
23 the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the  
24 Bankruptcy Court for the temporary allowance of your Claim for voting purposes  
25 and your Claim or portion thereof, as applicable, must be temporarily allowed by the  
26 Bankruptcy Court for voting purposes by the Voting Deadline or you will not be  
27 entitled to vote to accept or reject the Plan.

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28           <sup>7</sup> **The amount of the Claim on the Ballot is for voting purposes only.** The allowance of Claims in Class 3 (Investor  
29 Claims) and Class 4 (General Unsecured Claims) for distribution purposes shall be determined separately in accordance  
with the process and procedures described in the Plan.

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1           **THE DEBTORS AND THE ICAP TRUST, AS APPLICABLE,**  
2           **RESERVE THE RIGHT, THROUGH THE CLAIM OBJECTION PROCESS,**  
3           **TO OBJECT TO OR SEEK TO DISALLOW OR SUBORDINATE ANY**  
4           **CLAIM FOR DISTRIBUTION PURPOSES, EXCEPT AS MAY BE**  
5           **EXPRESSLY PROVIDED OTHERWISE IN THE PLAN OR**  
6           **CONFIRMATION ORDER.**

7           3. Voting Instructions and Procedures

8           As set forth in the Disclosure Statement Order, all votes to accept or reject the  
9           Plan must be cast by using the Ballots enclosed with the Solicitation Packages or  
10          otherwise provided by the Plan Proponents or the Voting Agent. No votes other than  
11          ones using such Ballots will be counted, except to the extent the Bankruptcy Court  
12          orders otherwise. The Bankruptcy Court has fixed the Voting Record Date for the  
13          determination of the Holders of Claims who are entitled to (a) receive a copy of this  
14          Disclosure Statement and all of the related materials and (b) vote to accept or reject  
15          the Plan.

16          After carefully reviewing the Plan, this Disclosure Statement, and the detailed  
17          instructions accompanying your Ballot, you are asked to indicate your acceptance or  
18          rejection of the Plan by voting in favor of or against the Plan on the accompanying  
19          Ballot and making any applicable elections.

20          **The deadline to vote on the Plan is October 2, 2024 at 4:00 p.m. (prevailing**  
21          **Pacific Time) (the “Voting Deadline”).** In order for your vote to be counted, your  
22          Ballot must be properly completed in accordance with the Voting Instructions on the  
23          Ballot, and actually received no later than the Voting Deadline. You can submit your  
24          Ballot electronically via the Voting Agent’s online balloting portal (the “E-Balloting  
25          Portal”) at <https://cases.creditorinfo.com/iCap> by clicking the “Submit E-Ballot”  
26          section on the Debtors’ case website and following the instructions to submit your  
27          Ballot. You can also submit your Ballot by mailing your completed Ballot to the  
28          Voting Agent at the following address:

29           **By Regular Mail:**

30           BMC Group  
31           Attention: iCap Ballot Processing  
32           P.O. Box 90100  
33           Los Angeles, CA 90009

34           **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**  
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1                   **By Overnight Courier or Hand Delivery:**  
2

3                   BMC Group  
4                   Attention: iCap Ballot Processing  
5                   3732 W. 120th St.  
6                   Hawthorne, CA 90250

7

8                   **ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS.**  
9                   **IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO**  
10                  **VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH**  
11                  **EACH BALLOT.**

12                  Only the Holders of Allowed Claims or Claims that are deemed allowed for  
13                  purposes of voting on the Plan in Class 3 (Investor Claims) and Class 4 (General  
14                  Unsecured Claims) as of the Voting Record Date are entitled to vote to accept or  
15                  reject the Plan, and they may do so by completing the appropriate Ballots and either  
16                  (i) submitting those Ballots electronically via the Voting Agent's E-Balloting Portal  
17                  at <https://cases.creditorinfo.com/iCap> by clicking the "Submit E-Ballot" button and  
18                  following the instructions to submit your Ballot, or (ii) returning those Ballots in the  
19                  envelope provided to the Voting Agent so as to be actually received by the Voting  
20                  Agent by the Voting Deadline. Each Holder of a Claim must vote its entire Claim  
21                  either to accept or to reject the Plan and may not split such vote. The Ballots will  
22                  clearly indicate the appropriate return address. It is important to follow the specific  
23                  Voting Instructions provided on each Ballot.

24                  Unless otherwise provided in the Voting Instructions accompanying the  
25                  Ballots, the following Ballots will not be counted in determining whether the Plan  
26                  has been accepted or rejected:

- 27
- 28                  – Any Ballot that fails to clearly indicate an acceptance or rejection, or that  
1                  indicates both an acceptance and a rejection, of the Plan;
  - 2                  – Any Ballot received after the Voting Deadline, except if the Plan  
3                  Proponents have granted an extension of the Voting Deadline with respect  
4                  to such Ballot in writing, or by order of the Bankruptcy Court;
  - 5                  – Any Ballot containing a vote that the Bankruptcy Court determines was not  
6                  solicited or procured in good faith or in accordance with the applicable  
7                  provisions of the Bankruptcy Code;
  - 8                  – Any Ballot that is illegible or contains insufficient information to permit  
9                  the identification of the Claim Holder;
  - 10                 – Any Ballot cast by a Person that does not hold a Claim in a voting Class;
  - 11                 – Any Ballot that is not signed or does not contain an original signature; and

12                  **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**  
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- 1           – Any Ballot sent by facsimile, email, or electronic method other than via the  
2           Voting Agent's E-Balloting Portal.

3           Any party who has previously submitted a properly completed Ballot to the  
4           Voting Agent prior to the Voting Deadline may revoke such Ballot and change its  
5           vote or elections by submitting to the Voting Agent, prior to the Voting Deadline, a  
6           subsequent properly completed Ballot for acceptance or rejection of the Plan. In the  
7           case where multiple Ballots are received from the same Holder with respect to the  
8           same Claim prior to the Voting Deadline, the last timely received, properly executed  
9           Ballot will be deemed to reflect that voter's intent and will supersede and revoke any  
10          prior Ballot. Any party who has delivered a properly completed Ballot for the  
11          acceptance or rejection of the Plan that wishes to withdraw such acceptance or  
12          rejection rather than changing its vote may withdraw such acceptance or rejection by  
13          delivering a written notice of withdrawal to the Voting Agent at any time prior to the  
14          Voting Deadline. To be valid, a notice of withdrawal must (i) contain the description  
15          of the Claims to which it relates and the aggregate principal amount represented by  
16          such Claims, (ii) be signed by the withdrawing party in the same manner as the Ballot  
17          being withdrawn, (iii) contain a certification that the withdrawing party owns the  
18          Claims and possesses the right to withdraw the vote sought to be withdrawn, and  
19          (iv) be actually received by the Voting Agent prior to the Voting Deadline.

20          If you have any questions about (a) the procedure for voting your Claim or  
21          making elections on your Ballot, (b) the Solicitation Package that you have received,  
22          or (c) the amount of your Claim (which is for VOTING PURPOSES ONLY), or if  
23          you wish to obtain, at your own expense (unless otherwise specifically required by  
24          Bankruptcy Rule 3017(d)), an additional copy of the Plan, this Disclosure Statement,  
25          or any appendices, schedules, or exhibits to such documents, please contact the  
26          Voting Agent. Copies of the Plan, Disclosure Statement, and other documents filed  
27          in these Chapter 11 Cases may be obtained free of charge on the Debtors' case  
28          website at <https://cases.creditorinfo.com/iCap>. Documents filed in these Chapter 11  
                Cases may also be viewed at the United States Bankruptcy Court PACER website at  
<http://www.waeb.uscourts.gov>.

29          The Voting Agent will process and tabulate Ballots for the Classes entitled to  
30          vote to accept or reject the Plan and will file a voting report (the "Voting Report") on  
31          or before October 9, 2024. The Voting Report will, among other things, describe  
32          every Ballot that does not conform to the Voting Instructions or that contains any  
33          form of irregularity, including, but not limited to, those Ballots that are late, illegible  
34          (in whole or in material part), unidentifiable, lacking signatures, lacking necessary  
35          information, or damaged.

36  
37          **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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1                   **THE DEBTORS, TOGETHER WITH THE UNSECURED**  
2                   **CREDITORS' COMMITTEE, URGE HOLDERS OF CLAIMS WHO ARE**  
3                   **ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO**  
4                   **VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

5                   4.       Election on Investor Ballots to Contribute Certain Claims

6                   The Ballots also permit each Holder of a Class 3 Investor Claim to elect to  
7                   assign its Contributed Claims to the iCap Trust. By electing such option on its Ballot,  
8                   the applicable Investor agrees that, subject to the occurrence of the Effective Date  
9                   and the formation of the iCap Trust, it will be deemed to have, among other things,  
10                  assigned its Contributed Claims to the iCap Trust. Pursuant to the Plan, "Contributed  
11                  Claims" are all Causes of Action that a Creditor has against any Person that is not a Released Party and that are related in any way to the Debtors, their predecessors, their respective affiliates, or any Excluded Parties, excluding any Individual Investor-Specific Claims. The relative share of iCap Trust recoveries for any electing Investor will be enhanced by having the amounts that otherwise would be its Allowed Investor Class A Claim and its Allowed Investor Class B Claim each increased by the Contributing Claimants' Enhancement Multiplier – *i.e.*, 10%.

14                  In the event a Holder intends to apply certain IRS safe harbor procedures relating to the deduction of losses realized by Investors in certain fraudulent investment schemes (discussed more fully below in Article IX.C), the transfer by such Holder of a claim against a third party to the iCap Trust may affect the manner in which such safe harbor procedures can be applied. Accordingly, Holders are urged to consult with their own tax advisors regarding the potential tax consequences to them of transferring third party claims to the iCap Trust, including the effect of such transfer on the manner in which the IRS safe harbor procedures relating to the deduction of losses realized by Investors in certain fraudulent investment schemes may be applied.

21                  **ARTICLE II.**  
22                  **BACKGROUND**

23                  The information provided in this Article is based on the Debtors' books and records as well as the Debtors' ongoing investigation into the facts and circumstances surrounding the failure of the iCap business and potential causes of action related to such failure. The Debtors' investigation was overseen by their independent Board of Directors and spearheaded by Lance Miller, the Debtors' Chief Restructuring Officer ("CRO"), with substantial support from the Debtors' advisors and counsel. The Debtors conducted the investigation in collaboration with the Unsecured Creditors'

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Committee and its advisors, including forensic accounting professionals at B. Riley, the Unsecured Creditors' Committee's financial advisor, and the Unsecured Creditors' Committee's lawyers. The investigation included an analysis of the Debtors' accounting platform, bank statements, financial statements, and other financial records, as well as interviews with former employees willing to speak to the Debtors. The Debtors' investigation was further supported by a forensic accounting professional, Jeffrey H. Kinrich of Analysis Group, who is a certified public accountant, with extensive experience investigating and testifying on financial and accounting issues related to distressed companies. The summary contained in this Article is largely based on materials disseminated by Christensen, on behalf of the Debtors.

#### A. **Debtors' Organizational Structure**

The Debtors are part of a group of affiliated entities (collectively, the "iCap Entities") formed by, and formerly controlled by, Christensen.

The Debtors were founded beginning in 2007 by Christensen to allegedly invest in real estate opportunities in the Pacific Northwest. Beginning in 2014, the Debtors grew quickly, raising more than \$245 million in capital and deploying those funds toward real estate investments. By early 2023, the Debtors employed more than 35 employees in their headquarters based in Bellevue, Washington.

On September 28, 2023, Christensen resigned all positions at the Debtors and Lance Miller of Pivot Management Group (formerly of Paladin Management Group) was appointed CRO and Manager, as applicable, with full and exclusive control and authority over the Debtors and the prosecution of these Chapter 11 Cases.

##### 1. Business Divisions and Organization

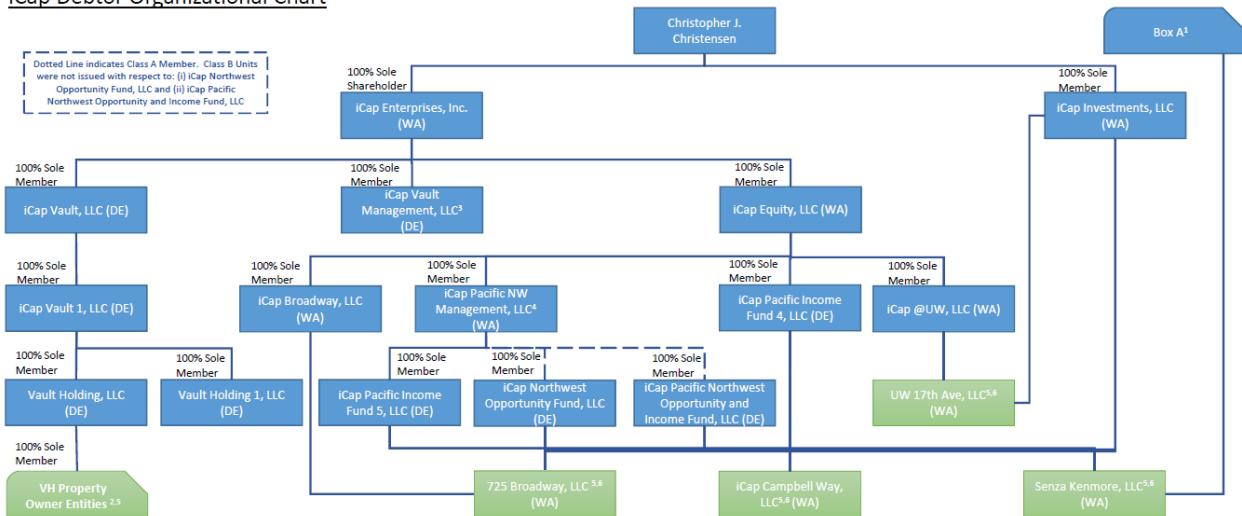
The Debtors invested in two categories of real estate, across two divisions of operations known as the "Portfolio Business" and the "Vault Business."

The Portfolio Business is the oldest of the Debtors' business lines. It operated under Debtor iCap Equity, LLC and various subsidiaries. According to Christensen, the Portfolio Business focused on development opportunities for multifamily real estate projects. In some cases, these projects started with raw and unentitled land, and in other cases the projects began with building permits in place or the improvement of existing structures.

According to Christensen, the Vault Business was started in 2018 for the purpose of investing in standalone real estate investments that had the potential to be or already were cash flow positive. The Vault Business operated under Debtor iCap Vault, LLC and various subsidiaries. Among these subsidiaries, iCap Vault 1, LLC (“Vault 1”), is registered with the U.S. Securities and Exchange Commission and issued publicly registered, non-traded debt under CIK # 1800199.

Both businesses existed under iCap Enterprises, Inc. (“Enterprises”) in the Debtors’ corporate structure. Properties within both businesses were held by single purpose entities (the “SPE Debtors”). The Debtors’ organizational structure is reflected below.

iCap Debtor Organizational Chart



1. Box A consists of the Class A Units holders of Senza Kenmore, LLC: (i) Devout Capital Limited, (ii) Shiyu Zhang, (iii) Qiong Huang, and (iv) Fengdi Chen.
2. VH Property Owner Entities consists of the following prop co. Debtors, all of which are Delaware limited liability companies: (i) VH Willows Townhomes, LLC; (ii) VH Senior Care, LLC; (iii) VH 1121 14<sup>th</sup>, LLC; (iv) VH 2nd Street Office, LLC; and (v) VH Pioneer Village, LLC.
3. iCap Vault Management, LLC is the Manager of (i) all prop co. Debtors included in VH Property Owner Entities, (ii) Vault Holding, LLC, (iii) Vault Holding 1, LLC, and (iv) iCap Vault 1, LLC.
4. iCap Pacific NW Management, LLC is the Manager of (i) 725 Broadway, LLC; (ii) iCap Campbell Way, LLC; (iii) UW 17th Ave, LLC; (iv) Senza Kenmore, LLC; (v) iCap Pacific Income Fund 4, LLC; (vi) iCap Pacific Income Fund 5, LLC; (vii) iCap Northwest Opportunity Fund, LLC; (viii) iCap Northwest Opportunity and Income Fund, LLC; and (ix) iCap Equity LLC.
5. Highlighted entities in green are prop co. Debtors.
6. See property specific organizational charts for further details and ownership percentages.

Enterprises also maintained the Debtors’ headquarters and employed the majority of the Debtors’ employees.

## 2. Real Estate Assets

On the Petition Date, the Debtors owned or controlled the real estate properties set forth in the table below, spread across both businesses. Many of these properties are subject to mortgages or other first deeds of trust. The table reflects the Debtors’ property assets, and estimated third-party, first-position mortgage balances as of the Petition Date:

### MODIFIED SECOND AMENDED DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION

<b>Debtor Owner</b>	<b>Address</b>	<b>Appx. 1<sup>st</sup> Asserted Position Mortgage Debt</b>	<b>Mortgage Lender</b>	<b>Status of Property</b>
725 Broadway, LLC	715-775 Broadway, Tacoma, WA	\$500,000	Serene Investment Management <sup>8</sup>	Subject to settlement agreement with Serene Investment Management (see Article III.C.1)
CS2 Real Estate Development, LLC	18416 Bothell Everett Hwy, Bothell, WA	Scheduled in the amount of \$16,724,500.00 as contingent, unliquidated, and disputed.	Ready Capital / Broadmark Lending, LLC	Subject to ongoing sale negotiations (see Article III.K)
iCap Campbell Way LLC	1231 Campbell Way, Bremerton, WA	\$500,000	Serene Investment Management	Sale approved [ECF No. 1179]
Senza Kenmore, LLC	15550 84th Ave SE, Kenmore, WA	N/A	N/A	Sale approved [ECF No. 562]
UW 17th Ave, LLC	4740 17th Ave NE, Seattle, WA	N/A	N/A	Sale approved [ECF No. 762]
VH 1121 14th LLC	1117 A 14th Ave., Seattle, WA 1117 B 14th Ave., Seattle, WA 1119 A 14th Ave., Seattle, WA 1119 B 14th Ave., Seattle, WA 1121 14th Ave., Seattle, WA	\$3,211,693.75 [POC 160]	Wilmington Savings Fund Society, FSB as Owner Trustee of MFA 2022-RTL1 Trust LLC	Sales approved [ECF Nos. 717, 814, 815, 816, 817]
VH 2nd Street Office LLC	2818 E. 2nd St., Vancouver, WA	\$3,231,457.50 [POC 159]	Socotra Reit I LLC; WE Alliance Secured Income Fund, LLC; Jason A. Yelowitz, Trustee of the Jason Yelowitz 2006	Sale approved [ECF No. 361]

<sup>8</sup> As discussed in further detail below, Serene Investment Management, LLC is one of the Debtors' DIP lenders. These liens were granted to Serene Investment Management in connection with a prepetition bridge loan, which the Debtors rolled up as part of the Serene DIP Loan (as defined below).

**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

<b>Debtor Owner</b>	<b>Address</b>	<b>Appx. 1<sup>st</sup> Asserted Position Mortgage Debt</b>	<b>Mortgage Lender</b>	<b>Status of Property</b>
			Trust, Dated March 31, 2006	
VH Pioneer Village LLC	4318 S. Settler Dr., Ridgefield, WA	\$2,102,641.56 as of March 31, 2024 [POC 116]	Tritalent Funding Group, Inc.	Sale approved [ECF No. 1180]
VH Senior Care LLC	302 SE 146th St., Burien, WA	\$1,797,629,16 [POC 117]	Redmond Funding Group	Subject to ongoing sale negotiations (see Article III.K)
	1226 160th St. SW, Lynwood, WA			Sale approved [ECF No. 721]
VH Willows Townhomes LLC	4906 A Willow St., Seattle, WA	\$1,962,519.58 [POC 124]	Wilmington Savings Fund Society, FSB as Owner Trustee of MFA 2022-RTL1 Trust	Sales approved [ECF No. 718, 719, 904]
	4910 B Willow St., Seattle, WA			Sale approved [ECF No. 720]
	4912 B Willow St., Seattle, WA			
	4918 C Willow St., Seattle, WA			

## B. The Debtors' Capital Structure

Based on the materials prepared and disseminated by Christensen and the Debtors, the Debtors funded their operations with a combination of minimal cash flow from business operations and primarily funded indebtedness.

### 1. Property-Level Secured Obligations

Various of the SPE Debtors and their real estate properties are subject to deeds of trust for mortgages and other secured debt arising from the acquisition, development, and/or ownership of real property. These obligations are generally owed by the SPE Debtor that owns the property at issue.

### MODIFIED SECOND AMENDED DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION

1           2.     Portfolio Notes

2           The Debtors purportedly raised debt financing in connection with the Portfolio  
3 Business through private placements of debentures and promissory notes issued  
4 by various Debtors (the “Portfolio Notes”). The Portfolio Notes provided for interest  
5 rates ranging from 6% to 15% per annum. Portfolio Notes were not issued by the  
6 SPE Debtors (which owned the Portfolio real estate assets), but instead were  
issued by Debtor entities that owned equity, directly or indirectly, in the SPE Debtors.

7           3.     Vault Notes

8           The Vault Business financed its operations through the issuance of both  
9 private placement notes and public demand notes.

10          *Private Placement Notes.* Beginning in July 2018, Vault 1 commenced a  
11 private placement of up to \$500 million of private placement notes (the “Vault Notes”).  
12 Approximately \$2.0 million of the Vault Notes are held by a joint venture owned  
13 and controlled by Christensen. As stated in materials disseminated by the Debtors,  
14 the Vault Notes were secured by assets of Vault 1 through a Pledge and Security  
15 Agreement, including its equity interests in subsidiaries and certain SPE Debtors.  
The Vault Notes were also guaranteed by Vault Holding, LLC through a Guaranty  
Agreement.

16          *Vault Public Demand Notes.* Pursuant to an Indenture dated September 18,  
17 2020, Vault 1 authorized up to \$500 million in Variable Denomination Floating  
18 Rate Demand Notes (the “Vault Debentures”). American Stock Transfer & Trust  
19 Company, LLC, serves as the trustee for the Vault Debentures. The Vault Debentures  
accrue interest at a floating rate per annum equal to the average savings account rate  
as posted by the Federal Deposit Insurance Corporation plus 2.00%, reset  
quarterly. As stated in materials disseminated by the Debtors, the Vault Debentures  
21 are guaranteed by Debtor Vault Holding 1, LLC (“Holding 1”), and pursuant to a  
Pledge and Security Agreement dated September 18, 2020, the Vault  
22 Debentures were purportedly secured by a pledge of the ownership interests in  
Holding 1. Pursuant to the Indenture, the Vault Debentures are subordinate to right  
23 of payment with respect to third party credit facilities.

24          As of the Petition Date and according to the Debtors’ books and records, the  
25 total amount of outstanding Vault Notes and Vault Debentures totaled  
approximately \$36.2 million.

1           4.     The Debtors' Capital Raising Efforts from Individual Investors

2           Based upon the Debtors' books and records, as of the Petition Date, the  
3     Debtors' note obligations are held by approximately 1,800 individual Investors. The  
4     Debtors' prepetition fundraising efforts relied substantially on raising debt capital  
5     from individual Investors both within and outside of the United States, including  
6     China, Taiwan, the United Kingdom, and the British Virgin Islands. All of the  
7     Debtors' top 30 creditors are Investors, with claims ranging from \$730,000 to \$10.5  
8     million.

9           5.     Intercompany Obligations

10          In the ordinary course of business, the Debtors advanced funds to each other.  
11         Some of those advances were recorded as loans in the Debtors' books and records,  
12         and others were formally documented as loan agreements.

13          6.     Equity Ownership

14          Enterprises is the ultimate parent for all of the Debtors other than iCap  
15     Investments, LLC ("Investments"). Christensen is the sole shareholder/member of  
16     both Enterprises and Investments. On September 28, 2023, Christensen resigned all  
17     positions at the Debtors and Lance Miller was appointed as the sole member of the  
18     Board of Directors and Chief Restructuring Officer of Enterprises, as well as  
19     Manager of Investments, and all of their direct and indirect subsidiary limited liability  
20     companies, with full and exclusive control and authority over the Debtors and the  
21     prosecution of these Chapter 11 Cases.

22          C.     Overview of the iCap Funds

23          According to Christensen, the original vision for the Debtors was primarily  
24     focused on investing as a passive investor in developers who would then be required  
25     by contract or operating agreement to develop specific projects. Under this structure,  
26     the Debtors would take a preferred equity position in the developer. The Debtors'  
27     activities would then be focused on finding new deals and monitoring the activity of  
28     development partners.

29          The Debtors chose to raise capital from Investors through debentures that  
30     required monthly interest payments – payments that would be required regardless of  
31     whether the underlying real estate investments were themselves producing positive  
32     cash flow.

1           1.     Fund 1

2           The first “fund,” iCap Pacific Northwest Opportunity and Income Fund, LLC  
3 (“Fund 1”), was formed in December 2013.<sup>9</sup> Fund 1 raised \$46.2 million in private  
4 placement debentures. Fund 1 investments were offered in partnership with Skyway  
5 Advisors, LLC as a managing dealer under the terms of a Selling Agreement. As  
6 stated in materials disseminated by the Debtors, the debentures were marketed as  
7 secured instruments, with liens on substantially all of Fund 1’s assets. The Fund 1  
8 Purchase Agreement further required the Debtors to enter into a Security Agreement,  
9 Pledge and Security Agreement, Deposit Account Control Agreement, and UCC  
10 Financing Statements, all of which were attached as exhibits to the Fund 1 offering  
memorandum. The Fund 1 Purchase Agreement also provided for appointment of a  
collateral agent, Kevin A. Carreno, P.A., as the exclusive agent for enforcing rights  
under the Fund 1 Purchase Agreement.

11          The Fund 1 offering was designed to be attractive to both Investors and the  
12 brokers and registered investment advisors who connected them with the Debtors. As  
13 reflected in the materials prepared by Christensen and the Debtors, the Fund 1  
14 debentures offered Investors a 12% interest rate per annum, paid monthly, plus a  
15 premium of 25% of net profits paid upon repayment. In addition, the Debtors offered  
16 brokers, including the managing dealer, total compensation of \$3.9 million, including  
a 7.0% selling commission, a 1% due diligence fee, a 2% managing dealer fee, and a  
3% fee for marketing and underwriting. These attractants proved powerful, with the  
Debtors oversubscribing the Fund 1 debentures for a total raise of \$45.4 million.

17          The Debtors’ investigation indicates that the Debtors ultimately did not honor  
18 its promises made in the Fund 1 offering memorandum and Fund 1 Purchase  
19 Agreement to secure the Fund 1 debentures with liens on substantially all assets of  
Fund 1 and its special purpose entities. Specifically and among other things, title  
20 reports for some of the properties acquired with Fund 1’s proceeds do not reflect  
deeds of trust to secure liens held by the Fund 1 Investors. Similarly, whereas Fund  
21 had its own bank account, it does not appear that a Deposit Account Control  
22 Agreement was ultimately placed on that account.

23          When the principal for the collateral agent died in March 2016, a replacement  
24 agent was not appointed, leaving Investors with no ability to enforce rights under the  
25 Fund 1 Purchase Agreement or related agreements.

---

26  
27          9 Prior to Fund 1, the Debtors had two earlier investment vehicles, iCap B1, LLC (formed in September 2013) and iCap  
B2, LLC (formed in October 2013).

1           The Debtors purportedly deployed the Fund 1 debenture proceeds between  
2 February 2014 and October 2015, investing in more than 30 projects.

3           2.     Fund 2

4           The second “fund,” iCap Northwest Opportunity Fund, LLC (“Fund 2”), was  
5 formed in April 2015 – almost exactly a year from closure of Fund 1’s subscription  
6 period. Its structure and fundraising resembled Fund 1 in most respects, with a  
7 managing dealer (Stillpoint Capital, LLC), a collateral agent (Experts Counsel, Inc.),  
8 referenced accountants and outside counsel. It raised \$46.5 million through private  
9 placement debentures. As stated in materials prepared by Christensen and the  
10 Debtors, Fund 2’s debentures matured December 31, 2017, and promised interest of  
11 10% per annum, paid monthly in arrears, with a payoff premium of 35% of Fund 2’s  
12 net profits. Brokerage fees and commissions matched those of Fund 1, totaling \$4.0  
13 million (albeit comprised of different individual fees).

14           As with Fund 1, the Fund 2 Purchase Agreement anticipated that the  
15 debentures would be secured by liens on substantially all assets of Fund 2 and the  
16 underlying real estate. As with Fund 1, the Debtors’ investigation indicates that the  
17 Debtors ultimately did not honor their promises to grant these liens.

18           The principal for the collateral agent was the same principal for Fund 1’s  
19 collateral agent, and was not replaced after his death, leaving Investors in the same  
20 position as Fund 1 Investors, with no ability to enforce rights under the Fund 2  
21 Purchase Agreement or related agreements.

22           The Debtors deployed the Fund 2 debenture proceeds between May 2015 and  
23 December 2018, investing in more than 25 projects.

24           a.     *Fund 1 and Fund 2 Extensions*

25           The Debtors modeled Funds 1 and 2 on the assumption that individual  
26 investments would conclude within 24 months. In reality, however, the Debtors’  
27 expectations proved too optimistic. By November 2016 (one month before maturity  
28 of Fund 1 and only a year before Fund 2 matured), the Debtors had exited 22 of its  
original investments with an average hold period of 441 days. Only nine of those  
projects were exited within one year of the initial investment date. Another 20  
original investments were still pending, with an average hold period of 661 days. In  
addition, despite consistent statements by the Debtors in quarterly newsletters and  
investor calls that both funds were performing well, according to the Debtors’ books

1 and records, Fund 1's real estate investments lost approximately \$38 million through  
2 2021, and Fund 2's investments lost \$18.5 million through 2021.

3        *Fund 1 Extensions.* Fund 1 matured in December 2016. The Debtors were  
4 unable to repay the Fund 1 debentures. In advance of that maturity date, in May 2016  
5 the Debtors asked Investors to agree to extend the maturity date to December 31,  
6 2017 (the "Fund 1 First Extended Maturity Date"). The extension letter provided  
7 Investors with the option to either extend the maturity date for their investments, or  
keep the existing maturity date.

8        A number of Investors elected not to extend their maturity dates but did not  
9 receive repayment of their principal at that time. The Debtors' books and records do  
not reflect payment of any principal amounts made in response to this letter.

10        The Fund 1 First Extended Maturity Date occurred on December 31, 2017.  
11 The Debtors were still unable to repay the Fund 1 debentures. The Debtors therefore  
12 delivered notice to Fund 1 Investors, dated November 30, 2017, purporting to extend  
13 the maturity date to March 31, 2018 (the "Fund 1 Second Extended Maturity Date").  
14 Even by the Fund 1 Second Extended Maturity Date, the Debtors were unable to and  
15 did not repay the Fund 1 debentures. On March 1, 2018, the Debtors again contacted  
16 Investors and requested an extension to December 31, 2020, with two one-year  
extensions (the "Fund 1 Third Extended Maturity Date"). This time, the  
correspondence warned Investors that their monthly interest payments would stop  
unless they agreed to the extension.

17        The Debtors were unable to repay the Fund 1 debentures by the Fund 1 Third  
18 Extended Maturity Date. On November 5, 2020, the Debtors contacted Investors and  
19 provided them with a choice to either "roll over" their Fund 1 debentures into another  
iCap fund, or stay with Fund 1 but subject to a one-year extension of the maturity  
20 date (to December 31, 2021).

21        Despite all of these extensions, the Debtors continued to pay interest to  
22 Investors.

23        *Fund 2 Extensions.* Fund 2 matured on December 31, 2017. The Debtors were  
24 unable to repay the Fund 2 debentures, and therefore exercised an option to extend  
25 the maturity date by a year, to December 31, 2018 (the "Fund 2 First Extended  
Maturity Date"). The Debtors' books and records do not reflect payment of any  
26 principal amounts made in response to this letter.

27  
28        **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

1           The Debtors were still unable to repay the Fund 2 debentures by the Fund 2  
2 First Extended Maturity Date. On November 9, 2018, the Debtors emailed Investors  
3 and asked for an additional extension to December 31, 2020, and two additional one-  
4 year extensions (the “Fund 2 Second Extended Maturity Date”). By the further  
5 extended maturity date, the Debtors were unable to and did not repay the Fund 2  
6 debentures. On November 5, 2020, the Debtors contacted Investors and provided  
7 them with a choice to either “roll over” their Fund 2 debentures into another iCap  
8 fund, or stay with Fund 2 but subject to a one-year extension of the maturity date (to  
9 December 31, 2021).

10           As with Fund 1, despite all of these extensions, the Debtors continued to pay  
11 interest to Investors.

12           3.     Fund 3

13           In November 2017 – a month before Fund 2’s original maturity date and the  
14 Fund 1 First Extended Maturity Date – the Debtors launched “Fund 3,” iCap Equity,  
15 LLC. Fund 3 was unique in that it did not own or invest in real estate projects directly.  
16 Instead, as stated in materials prepared by Christensen and the Debtors, Fund 3 was  
17 marketed as a parent vehicle or “fund of funds” that owned equity interests in Funds  
18 1 and 2 and could benefit from income generated from those Funds. In addition, Fund  
19 3 would ultimately serve as a vehicle to facilitate “rollovers” of investments in Funds  
20 1 and 2. With an initial raise of \$10 million (“Fund 3 Round 1”), the Debtors  
21 purportedly sought to raise capital primarily to address expansion plans. As part of  
22 this round, the Debtors represented that Fund 3’s income streams already supported  
23 profitable operations, such that proceeds from the proposed investments would be  
24 used for corporate growth and expansion plans of the Debtors as they launched  
25 additional investment fund vehicles, made direct real estate investments, and retired  
26 prior obligations.

27           Fund 3 Round 1 raised a total of \$33.6 million in new investment. The Debtors  
28 began deploying the proceeds of Fund 3 Round 1 to address payments owed to Fund  
1 and Fund 2 Investors.

29           Following the close of Fund 3 Round 1, the Debtors expanded Fund 3 with  
30 two additional rounds (“Fund 3 Round 2” and “Fund 3 Round 3,” respectively). Fund 3 Round 2, for up to \$10 million, launched on June 1, 2019 (one month before  
31 conclusion of the raise period for Fund 4, discussed below), and Fund 3 Round 3, for  
32 up to \$50 million, launched on July 1, 2020 (one month after conclusion of Fund 3  
33 Round 2’s raise period and two months after launch of iCap Investments, discussed  
34 below).

35           **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
36 FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

1           As reflected above, Fund 3 was structured differently from Funds 1 and 2. It  
2 was the first fund raised without a managing dealer, and investments were styled as  
3 unsecured. Interest, paid monthly, accrued at 10% per annum and no payment  
4 premium was offered. And whereas Funds 1 and 2 provided for two-year maturities,  
5 Fund 3 anticipated a three-year maturity with a right to extend for a fourth year. Each  
6 of the offering documents underlying Fund 3's three rounds of fundraising delineated  
7 anticipated use of proceeds, however, none of those disclosures mentioned an  
8 intention to pay interest to existing Investors. The Debtors' investigation indicates  
9 that, in actuality, the majority of the fundraised amounts were used for that purpose.  
10

11           The notes issued under Fund 3 Round 1 began to mature in November 2020 –  
12 during the Debtors' fundraising period for Fund 3 Round 3. The Debtors lacked the  
13 ability to repay these notes, and instead elected to extend the maturity dates for a  
14 year. The Debtors continued to fundraise under Fund 3 Round 3 after these  
15 extensions, but did not amend the Fund 3 Round 3 private placement memorandum  
16 to disclose the extensions.

17           4. Fund 4

18           In late 2017 – as Fund 3 Round 1 was commencing – the Debtors began to  
19 focus their fundraising efforts on foreign Investors, particularly those residing in  
20 China and/or the Chinese-American community in Washington. Among other things,  
21 the Debtors retained employees from the Chinese community to focus on their  
22 targeted fundraising initiatives and ultimately opened a foreign office in China  
23 staffed with local fundraising professionals. Initially, these efforts centered around  
24 two new fundraises that each commenced on October 1, 2018 – six months after the  
25 maturity date for Fund 3 Round 1.

26           According to Christensen, iCap Pacific Income Fund 4, LLC ("Fund 4") was  
27 tailored to the Chinese community, employing a private placement memorandum and  
28 other transaction documents translated into Chinese. This fundraise purportedly  
returned to the concept of investing directly in real estate projects, to be held by  
subsidiary special purpose entities (SPEs).

Whereas Funds 1 and 2 promised security interests in substantially all assets of those Funds, including liens on the underlying real property, Fund 4 was structured differently. It was still marketed as "secured," but the security was limited to a pledge of the equity interest in Fund 4 itself (an interest that structurally was junior to repayment of the debentures, and therefore not true security for repayment), along with a guaranty from the owner of the equity in Fund 4. As with Funds 1 and 2, Fund

1           4 was marketed as a newly formed entity that would invest in real estate. Fund 4  
2 raised a total of \$12.4 million.

3           Shortly after Fund 4 was launched, Investors indicated a preference for Vault  
4 (discussed below) and Fund 3. Fund 4 therefore was not fully subscribed and the  
Debtors pivoted their fundraising efforts elsewhere.

5           5.     Investments

6           One month before Fund 3 Round 2's offering expired, on May 1, 2020, the  
7 Debtors began marketing a \$10 million raise for a new fund called iCap Investments,  
8 LLC ("iCap Investments"). The iCap Investments notes were marketed primarily to  
9 Chinese investors, and the subscription documents were all written in English and  
10 Chinese. These notes were structured similarly to Fund 3, with one- or two-year  
11 maturities (depending on which interest rate the Investors chose), and an interest rate  
12 of 4.0% per annum or 6.0% per annum. As with Fund 4, the iCap Investment notes  
13 were marketed as "secured," although the only form of security was a pledge of the  
14 equity interests in iCap Investments itself. iCap Investments, however, had an  
15 ownership structure distinct from the other funds in that it was wholly-owned and  
16 managed directly by Christensen.

17           The iCap Investments offering memorandum prepared by Christensen and the  
18 Debtors represented to Investors that iCap Investments owned three properties: "a  
19 single-family home located in Issaquah, Washington, which it owns directly; a 26-  
20 unit townhome project located in Seattle, Washington, which is owned through  
Seattle Modern Living, LLC; and a development site for 108 apartment units, located  
in Renton, Washington, which is owned through Colpitts Sunset, LLC." Based upon  
the Debtors' records and investigation, each of these statements was misleading; in  
reality, iCap Investments' assets at the time of its fundraising were materially less  
than represented.

21           Issaquah Property. The iCap Investments offering memorandum represented  
22 ownership of a single-family home located in Issaquah, Washington. This was a  
reference to a large home that the Debtors had been developing for several years for  
eventual use as Christensen's personal residence. iCap Investments owned this  
property and spent approximately \$2.9 million to develop it between September 2019  
and September 2020. When the home was completed in November 2020, iCap  
Investments transferred this property to Christensen directly in exchange for his  
refinance of the construction loan and for no additional consideration. Notably, this  
transfer occurred seven months after iCap Investments began fundraising under the  
iCap Investments offering memorandum (which, as discussed, represented iCap

1 Investments' ownership of the property). iCap Investments did not amend the iCap  
2 Investments offering memorandum to clarify that the property was no longer a company asset; instead, the Debtors continued to fundraise under the iCap Investments offering memorandum, raising an additional \$15 million between  
3 November 2020 and November 2022.

5        Willows Properties. The iCap Investments offering memorandum represented ownership of a 26-unit townhouse project located in Seattle, Washington through an entity named Seattle Modern Living, LLC. Prior to December 2019, this development, commonly referred to as the "Willows Townhomes," was owned by Fund 2, subject to \$9.4 million of debt and with recorded book value of \$13.5 million. According to Christensen, in December 2019 and during the lead-up to launch of the iCap Investments offering memorandum, iCap Investments "purchased" the Willows Townhomes development from Fund 2 for an intercompany account payable (not cash) of \$4.9 million and assumption of the \$9.4 million in debt. At the time of issuance of the iCap Investments offering memorandum, whereas iCap Investments owned the Willows Townhomes project, it was subject to more debt than the book value of the property – debt that was not disclosed in the iCap Investments offering memorandum itself.

14        Colpitts Development. The iCap Investments offering memorandum represented ownership of a development site for 108 apartment units, located in Renton, Washington, which is owned through Colpitts Sunset, LLC. According to Debtors records, however, at the time the iCap Investments offering memorandum was issued, iCap Investments owned no interest in the Colpitts Sunset development. Instead, in February 2021 iCap Investments used a portion of newly raised Investor proceeds to purchase a minority interest (less than 35%) in Colpitts Sunset, LLC.

19        iCap Investments ultimately raised a total of \$20.6 million in cash receipts from debenture subscriptions.

21        6.        Vault

22        While launching Fund 4, the Debtors also launched a new fundraising vehicle called iCap Vault 1, LLC ("Vault"). Vault raised funds first through a \$500 million private placement memorandum, and later through publicly registered senior secured demand notes.

26        According to Christensen, Vault was envisioned as an alternative to a bank account, whereby Investors could place or withdraw funds from their accounts on a daily basis and earn a modest interest rate, calculated daily. Among other things,

1      Vault investments had a low minimum initial investment requirement (\$25), and an  
2      even lower minimum outstanding investment requirement (\$1.00). In addition, as  
3      reflected in the materials prepared by Christensen and the Debtors, Vault was  
4      marketed for its convenience, allowing Investors to seamlessly transfer funds in and  
5      out of their accounts through a dedicated app and website that could be linked to  
6      Investor bank accounts. The Debtors' investigation indicates that the Vault concept  
7      was regularly referred to internally as an unregulated bank, and the Debtors marketed  
8      the Vault opportunity by comparing it with banking options.

9      Vault was not registered with any governmental entity as a banking institution,  
10     it was not regulated as a banking institution, and it lacked the typical controls and  
11     procedures used at a bank (including "Know Your Customer" requirements). In  
12     addition, whereas Investors were encouraged to think of Vault as a banking  
13     alternative and although Investors were promised that Vault would maintain cash  
14     reserves equal to 10% of outstanding principal balances, Vault did not maintain any  
15     specific capital reserve requirements and often fell below this 10% reserve promise.  
16     And whereas Vault was advertised as using an app for ease of access to funds, the  
17     Debtors' investigation indicates that no such app existed or was accessible to  
18     Investors (Investors were instead required to fill out manual transfer forms that were  
19     processed by the Debtors' finance team).

20                  a. *Vault Fundraising Issues*

21      The Debtors' investigation indicates that Vault was a favorite investment  
22     vehicle for foreign Chinese investors. That was due, in part, to emphasis by the  
23     Debtors' China-based international marketing team. It may have also been due,  
24     however, to the ease with which Investors were told they could deposit and withdraw  
25     funds, a benefit resulting from the Debtors' lack of policies and procedures for  
26     conducting any diligence or scrutiny towards the sources or uses of invested amounts.  
27     Specifically, the Debtors made virtually no effort to implement customary "Know  
28     Your Customer" protocols. Among other things, for example:

- 29                  • Investors were not asked to provide information to confirm their identities,  
30                  affiliations, or the sources of the funds invested.
- 31                  • Investments were accepted in all manner of forms and denominations  
32                  (including ACH, wire, and check), and in some instances deposits were  
33                  made in the form of cash delivered physically to the Debtors' headquarters  
34                  in Bellevue, Washington.
- 35                  • Investors were permitted to transfer title to their investments to third parties  
36                  with the submission of a simple form. When these accounts were

1 transferred, the Debtors did not complete any diligence to confirm the  
2 reason for the transfer, whether consideration was exchanged by the parties,  
3 or the identity of the recipient holder.

- 4
- 5 • In some instances, investment withdrawals were received in the form of  
6 cash.
  - 7 • In some instances, investments were made for reasons other than economic  
8 gain. For example, some investments were made into Vault for purposes of  
9 supporting applications under the United States EB-5 Immigrant Investor  
10 Program. As another example, several sizeable investments were made in  
11 order to make Chinese funds look like foreign investments (*i.e.*, non-  
12 Chinese) when brought back into China and invested in Chinese projects.

13 b. *Vault Proceed Uses*

14 Vault's stated business model was to invest in income-producing real estate  
15 assets. According to Christensen, Vault initially invested some investor funds into  
16 nursing homes and other properties that generated rental income. The Debtors'  
17 investigation indicates that as Vault's tenure extended its invested capital was  
18 increasingly used to prop up both the Debtors' real estate development projects  
19 (projects that were not completed or even close to completion, and therefore would  
20 not produce income in the near future), and the Debtors' faltering ability to satisfy  
21 Investor interest payments.

22 Some of the disbursements were not utilized by the recipient and were instead  
23 forwarded to other iCap entities (resembling an intercompany transfer more than a  
24 real estate investment).

25 The Debtors' investigation indicates that Vault was an integral part of the  
26 Debtors' continued ability to maintain interest payments for Investors in the various  
27 funds. The Debtors had for years been in the practice of moving cash among  
28 subsidiary bank accounts as needed to pay Investor interest obligations, recording  
those movements as intercompany loans and payables. But that approach could not  
work with Vault because, as a publicly registered entity, those types of intercompany  
loans would not satisfy an audit. To circumvent audit requirements, when Vault's  
funds were needed to pay Investor obligations elsewhere, Vault made an investment  
in a specific construction project (an SPE) and recorded a deed of trust against that  
property. Debtors records show, however, that as soon as the funds were transferred  
from Vault to the project's bank account, they were immediately transferred to a  
different affiliate (Fund 1, Fund 2, or Fund 3) and paid to Investors.

1           7.     Funding

2           On May 13, 2021 (one month after close of Fund 3 Round 3), the Debtors  
3 began marketing another \$50 million raise, this time for a new fund called iCap  
4 Funding, LLC (“Funding”). As with iCap Investments, the Funding notes were  
5 marketed primarily to Chinese investors, and the subscription documents were all  
6 written in English and Chinese. According to the materials prepared by Christensen  
7 and the Debtors, these notes had a two-year maturity with no extension period, and  
8 an interest rate of 12% per annum. As with the iCap Investment notes, the Funding  
notes were marketed as “secured” despite the only form of security being a pledge of  
the equity interests in Funding itself.

9           Although Funding had no assets when it commenced fundraising, the Funding  
10 offering memorandum referred to “income from the gains [Funding] receives from  
11 its Portfolio Investments” and described its investment focus as seeking “investments  
12 that have high yield potential and are related to real estate.” The Funding offering  
memorandum was more explicit than prior offering documents about an intention to  
invest fundraising proceeds in other Funds.

13           8.     Fund 5

14           iCap Pacific Income Fund 5, LLC (“Fund 5”) was launched on September 5,  
15 2019. With a maximum subscription amount of \$50 million (with an over-allotment  
16 of \$25 million), Fund 5 was marketed as investing directly in real estate projects, to  
be held by subsidiary SPEs. According to the materials prepared by Christensen and  
17 the Debtors, interest was 9% per annum, paid monthly, with the first \$10 million of  
18 invested amounts benefitting from a 10% interest rate for the first year. Unlike other  
notes, Fund 5 limited Investors to making a redemption request any time after the 1-  
19 year anniversary of their investment date, subject to a limit of no more repayments  
20 than 5% of the combined notes of the Debtors per quarter. Upon any demand for  
21 repayment prior to the 5th anniversary of the issuance date of the note, a discount  
would be applied to the amount outstanding under the note, depending on the time  
22 from the issuance of the note at which the repayment demand is received by the  
Debtors.

23           Fund 5 was marketed as secured, with a pledge of the membership interests in  
the underlying SPEs. Unlike Funds 1 and 2, however, Fund 5 notes were not secured  
25 by other collateral, such as cash accounts or underlying properties themselves.

26           Fund 5 was the first fund since Funds 1 and 2 to have a managing dealer,  
27 Cobalt Capital, Inc., and a collateral agent, MarketPlace Realty Advisors, LLC. In

1 exchange for its services, the Fund 5 private placement memorandum disclosed total  
2 fees to be paid to the managing dealer of \$4.9 million, assuming the round was fully  
3 subscribed. Fund 5 raised a total of \$3.0 million.

4       9.     Fund 6

5           In the fall of 2019, alongside the rollout of Fund 5, the Debtors formed iCap  
6 Pacific Income Fund 6, LLC (“Fund 6”), with the claimed purpose of launching  
7 another publicly registered investment vehicle similar to Vault. Fund 6 never  
launched.

8       10.    Broadway

9           The last of the Debtors’ funds, called iCap Broadway, LLC (“Broadway”),  
10 launched on April 1, 2022 – two months before expiration of the fundraise period for  
11 Funding and two weeks after the last investment in Funding. Unlike prior funds,  
12 Broadway was focused on a specific real estate project and purported to be raising  
13 funds specifically for that project. The Broadway notes had a two-year maturity,  
bearing interest of 8% per annum, paid monthly. As with Fund 3, the Broadway notes  
14 were marketed as “secured” despite the only form of security being a pledge of the  
equity interests in Broadway itself.

15          The Broadway Fund raised zero dollars in cash receipts. Instead, it raised \$5.8  
16 million in rollovers from Investors, plus \$313,000 in intercompany investments  
17 (primarily from Vault). There were no material disbursements from the Broadway  
Fund.

18       **D. Events Leading to the Bankruptcy Filing**

19          By early 2022, the Debtors had 18 properties across both the Portfolio Business  
20 and the Vault Businesses with 22 employees. According to Christensen, however, the  
21 Debtors’ growth was financed largely through Investor capital that was structured as  
indebtedness. By November 2022, total indebtedness (not including intercompany  
22 obligations) reached \$230 million, with reported consolidated assets of \$93 million.  
At the same time, the national and state economies were experiencing significant  
23 disruption, with slowing growth, substantial inflation, and successive increases in  
interest rates. The Debtors were no longer able to service their ongoing interest  
24 payments without raising additional liquidity. On November 15, 2022, the Debtors  
announced a 12-month extension of maturity dates for certain of the Portfolio Notes.  
25 This was followed, on March 20, 2023, with the Debtors’ announcement that they  
26 were suspending interest payments on all Portfolio Notes.  
27

1           The Debtors' liquidity continued to decline, and on April 15, 2023, the  
2 Debtors terminated substantially all of their employees.

3           On July 14, 2023, the Debtors engaged the services of Paladin Management  
4 Group to assist in evaluating options for addressing their liquidity needs  
and/or restructuring their obligations.

5           1. Investor Litigation

6           Over the course of the summer of 2023, Investors began sending demand  
7 letters and threatening or commencing litigation against the Debtors, Christensen,  
8 and others allegedly involved with the Debtors' prior operations. Below is a chart  
9 listing active lawsuits against the Debtors relating to the Debtors' debt obligations (the  
“Active Prepetition Lawsuits”):

Case Title	King County Superior Court	Amount Sought/ Dispute
Julie A. Bosia, <i>et al.</i> v. iCap Pacific Northwest Opportunity and Income Fund, LLC, and iCap Northwest Opportunity Fund, LLC	KCSC 23-2-16200-5	<i>Undefined in Complaint.</i>
Yongzhi Liang, <i>et al.</i> v. Chris Christensen and Debra Christensen, <i>et al.</i> <i>*Pending Motion to Consolidate with Li Tan.</i>	KCSC 23-2-13456-7	\$11,500,000
Li Tan, <i>et al.</i> v. Chris Christensen and Debra Christensen, <i>et al.</i> <i>*Pending Motion to Consolidate with Liang</i>	KCSC 23-2-12786-2	\$35,429,941
Paul Weiss v. iCap Vault 1, LLC, <i>et al.</i>	KCSC 23-2-13897-0	\$135,000
Chen Xi v. iCap Vault 1, LLC, <i>et al.</i>	KCSC 23-2-14401-5	\$113,000

26           The complaints in the Active Prepetition Lawsuits include allegations and  
27 causes of action for fraud, violation of state consumer protection laws, breach of

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contract, and civil conspiracy. In addition to the foregoing lawsuits, the Debtors have received numerous inquiries as well as demand letters from Investors.

On August 30, 2023, the Debtors received a letter from the State of Washington Department of Financial Institutions, Securities Division, which demanded that the Debtors cease and desist from selling any unregistered securities and requested the delivery of certain documents by October 6, 2023.

The Debtors' obligation to defend against the Active Prepetition Lawsuits placed a substantial financial burden on the Debtors, straining the Debtors' already limited liquidity. The Active Prepetition Lawsuits also required substantial attention from the Debtors' restructuring advisors.

2. Temporary Restraining Order and Prepetition Term Sheet

On August 14, 2023, the Washington Superior Court for King County (the “Superior Court”) issued a temporary restraining order (the “TRO”) in *Li Tan, et al. v. Chris Christensen, et al.*, Case No. 23-2-12786-2, which was commenced by an ad hoc group of the Debtors’ noteholders (the “Ad Hoc Group”). The TRO restricted the Debtors from encumbering certain assets, restricted the Debtors’ access to their bank accounts, and generally placed restrictions on the Debtors’ use of cash. The issuance of the TRO accelerated the Debtors’ need to prepare for an expedited chapter 11 filing or other insolvency proceeding and, accordingly, the Debtors and their advisors were required to devote substantial energy and resources to negotiations with the Ad Hoc Group regarding an acceptable restructuring path.

The Debtors’ counsel and other advisors worked to organize and lead negotiations with the Ad Hoc Group and Christensen. These negotiations were robust and constructive, and on August 23, 2023, the negotiating parties executed a term sheet (the “FSA”), which paved the way for the commencement of these Chapter 11 Cases. On September 25, 2023, the Superior Court entered an amended, agreed-upon TRO order that embodied certain of the terms of the FSA, as well as certain additional relief requested by the Ad Hoc Group, Christensen, and the Debtors. In addition, the Liang plaintiffs group stipulated to consolidate its lawsuit against the Christensens and be bound by the TRO order entered in the action brought by the Ad Hoc Group.

## ARTICLE III. THE CHAPTER 11 CASES

On September 29 and 30, 2023, 31 of the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for

1 the Eastern District of Washington. Subsequently, Colpitts Sunset, LLC, CS2 Real  
2 Estate Development, LLC, and iCap International Investments, LLC (the “Additional  
3 Debtors”) filed voluntary petitions on the following dates: (i) November 8, 2023 and  
4 (ii) November 14, 2023. The Chapter 11 Cases are being jointly administered under  
5 the case caption *In re iCap Enterprises, Inc., et al.*, Case No. 23-01243-WLH11  
6 (Bankr. E.D. Wash.). An immediate effect of commencement of the Chapter 11 Cases  
7 was the imposition of the automatic stay under Bankruptcy Code section 362(a),  
8 which, with limited exceptions, enjoins the commencement or continuation of all  
9 collection efforts by Creditors, the enforcement of Liens against property of the  
10 Debtors, and the continuation of litigation against the Debtors during the pendency  
11 of the Chapter 11 Cases. The automatic stay will remain in effect, unless modified  
12 by the Bankruptcy Court, until the Chapter 11 Cases are closed.  
13

#### 14           A.     First Day Motions and Orders

15           On or about the Petition Date, the Debtors filed certain “first day” motions and  
16 applications with the Bankruptcy Court seeking certain immediate relief to aid in the  
17 efficient administration of these Chapter 11 Cases and to facilitate the Debtors’  
18 transition to debtor-in-possession status. *See* ECF Nos. 2, 3 ,4 ,14, 15, 16, 17, 33.

19           The Bankruptcy Court held hearings on the “first-day” motions on October 4,  
20 2023, and October 30, 2023. In connection with these hearings, the Bankruptcy Court  
21 entered a series of customary “first day” and “second day” orders, permitting the  
22 Debtors to, among other things, use cash collateral, pay certain taxes and fees, pay  
23 insurance premiums, enter into a consulting agreement with Christensen, and  
24 establish notice procedures for the Chapter 11 Cases. *See* ECF Nos. 9, 63, 64, 65, 66,  
25 67, 68, 152, 153, 154. After the Additional Debtors filed their bankruptcy petitions,  
26 the Debtors filed the *Ex Parte Supplemental Motion for Entry of Order (I) Directing*  
27 *Joint Administration; and (II) Limiting Scope of Notice with Respect to Newly-Filed*  
28 *Cases* [ECF No. 159], seeking entry of an order (i) authorizing joint administration  
of the Additional Debtors’ cases along with the 31 previously-filed Debtors’ cases,  
for procedural purposes only and (ii) approving the use of the Limited Mailing List  
and approved notice procedures in the Additional Debtors’ cases. On November 16,  
2023, the Bankruptcy Court granted the Additional Debtors’ joint administration  
motion. *See* ECF No. 164.

#### 29           B.     Retention of Advisors

30           Shortly after the Petition Date, the Debtors filed applications to employ  
31 Buchalter, a Professional Corporation (“Buchalter”), as bankruptcy counsel, and  
32 Lance Miller and Paladin Management Group LLC (“Paladin”), as the Debtors’ CRO

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1 with additional support personnel. *See* ECF Nos. 84, 86. On October 31, 2023 and  
2 December 12, 2023, respectively, the Bankruptcy Court entered orders approving  
3 each of the foregoing applications. *See* ECF Nos. 119, 218.

4 Subsequently, the Debtors filed applications to employ O'Melveny & Myers  
5 LLP ("O'Melveny"), as lead bankruptcy counsel, Pivot Management Group, LLC  
6 ("Pivot") to replace Paladin with respect to providing additional support personnel  
7 for the CRO, and Black Helterline LLP, as bankruptcy co-counsel. *See* ECF Nos.  
8 376, 801, 1133. On February 22, 2024, June 7, 2024, and August 2, 2024,  
respectively, the Bankruptcy Court entered orders approving each of the foregoing  
applications. *See* ECF Nos. 461, 986, 1155.

## 9 **C. DIP Financing Motions**

### 10 1. Serene DIP Motion

11 Given that the Debtors had extremely limited liquidity and that most of their  
12 capital was tied up in illiquid real property investments, the Debtors required debtor-  
13 in-possession financing at the outset of these Chapter 11 Cases. On October 3, 2023,  
14 the Debtors filed a motion (the "Serene DIP Motion")<sup>10</sup> seeking interim and final  
15 orders authorizing the Debtors to, among other things, (i) borrow up to \$5,250,000  
16 pursuant to the terms and conditions of the DIP Documents and the DIP Orders (with  
17 up to \$2.5 million to be available on an interim basis) (the "Serene DIP Loan") in  
18 postpetition financing from Serene Investment Management, LLC ("Serene");  
19 (ii) grant priming liens and security interests to Serene to secure the applicable  
Debtors' obligations under the Serene DIP Loan; (iii) subject to the terms and  
conditions set forth in the Serene DIP Motion, use Serene's cash collateral; and  
(iv) provide adequate protection to the holders of alleged prepetition liens. *See* ECF  
No. 33.

20 On October 5, 2023, the Bankruptcy Court entered an order granting the relief  
21 requested in the Serene DIP Motion on an interim basis and authorized the Debtors  
22 to borrow up to \$2,500,000.00 during the interim period. *See* ECF No. 68.

23 On November 13, 2023, the Bankruptcy Court entered an order granting the  
24 Serene DIP Motion on a final basis. *See* ECF No. 154 (the "Final Serene DIP Order").  
The Final Serene DIP Order provides, among other things, (i) authorization for the  
25 Debtors to borrow from Serene in an amount not to exceed \$5,250,000; (ii) priming  
Liens and security interests to Serene to secure the Debtors' obligations under the

27 <sup>10</sup> Capitalized terms used in this Article III.C but not defined shall have the meaning given to such terms in the Serene  
DIP Motion or Final Serene DIP Order, as applicable.

1 DIP Documents; (iii) Serene with Allowed Administrative Expense Claims pursuant  
2 to Bankruptcy Code section 364(c)(1) in respect of all amounts advanced to the  
3 Debtors under the DIP Documents; and (iv) approval to use the Cash Collateral in  
accordance with the Approved Budget.

4 On April 26, 2024, the Debtors filed the *Debtors' Motion for an Order*  
5 *Authorizing Interim Distribution to DIP Lender Serene Investment Management,*  
6 *LLC* [ECF No. 819], seeking an order authorizing an interim distribution to Serene  
7 on account of the Serene DIP Loan. On May 16, 2024, the Bankruptcy Court entered  
8 an order granting the Debtors' motion and authorized the Debtors to make an interim  
distribution to Serene in the amount of \$2,942,500.00, plus additional fees and costs.  
See ECF No. 911.

9 On July 15, 2024, the Debtors made an additional voluntary payment of  
10 \$2,242,000.00 to Serene in substantial satisfaction of the Serene DIP Loan. In  
11 connection with the payoff of the Serene DIP Loan, the Debtors and Serene have  
12 reached an agreement to resolve any remaining claims Serene may assert under the  
Serene DIP Loan.

13 On August 21, 2024, the Debtors filed a motion pursuant to Bankruptcy Code  
14 section 363(b) and Bankruptcy Rule 9019 seeking approval of a settlement agreement  
15 (the “Serene Settlement Agreement”) by and between the Debtors and Serene. See  
16 ECF No. 1225. Among other things, the Serene Settlement Agreement (i) resolves  
17 Serene’s remaining claims under the Serene DIP Loan, (ii) provides for the  
resolution, or transfer to the Debtors, of certain claims against Christensen arising  
18 under the Serene DIP Loan, (iii) provides for mutual releases among Serene and the  
19 Debtors, and (iv) grants Serene an exclusive option to purchase the real property  
commonly known as 715–775 Broadway, Tacoma, WA (subject to the assumption  
of certain liabilities).

20       2.     Supplemental DIP Motion  
21

22 On July 2, 2024, the Debtors filed the *Motion of the Debtors for Order:*  
*(I) Authorizing the Debtors to Obtain Supplemental Postpetition Secured Financing;*  
*(II) Granting Superpriority Administrative Expense Claims; and (III) Granting*  
*Related Relief* [ECF No. 1063] (the “Supplemental DIP Motion”), seeking authority  
for the Debtors to, among other things, (i) borrow \$2,014,414 (the “Supplemental  
DIP Loan”) in postpetition financing from Socotra REIT 1, LLC, WE Alliance  
Secured Income Fund, LLC, the Jason Yelowitz 2006 Trust Dated March 31, 2006,  
and Keith Holdings LLC (collectively, the “Supplemental DIP Lenders”); (ii) grant  
liens and security interests to the Supplemental DIP Lenders to secure the Debtors’

1 obligations under the Supplemental DIP Loan; and (iii) grant the Supplemental DIP  
2 Lenders Administrative Expense Claims for amounts advanced in connection with  
3 the Supplemental DIP Loan. *See ECF No. 1063.*

4 On July 19, 2024, the Bankruptcy Court entered an order granting the relief  
5 requested in the Supplemental DIP Motion and authorized the Debtors to borrow the  
6 full amount of the Supplemental DIP Loan. *See ECF No. 1139.* Pursuant to Article  
7 III.A.3 of the Plan, (i) all obligations of the Debtors under the Supplemental DIP  
8 Loan will be assumed by the iCap Trust; (ii) all Liens and security interests granted  
9 to secure the Debtors' obligations under the Supplemental DIP Loan will remain in  
place; and (c) the legal, equitable, and contractual rights of the parties under the  
Supplemental DIP Loan will be unaltered by the Plan.

10 Concurrently with the Supplemental DIP Motion, the Debtors filed the  
11 *Debtors' Motion to Approve Entry Into and Performance Under the Socotra*  
12 *Settlement Agreement* [ECF No. 1064] (the “Socotra Settlement Motion”), seeking  
13 to approve the Debtors’ settlement agreement (the “Socotra Settlement Agreement”)  
14 with Socotra REIT 1, LLC, WE Alliance Secured Income Fund, LLC, and Jason  
15 Yelowitz, in his capacity as trustee of the Jason Yelowitz 2006 Trust Dated March  
16 31, 2006 (the “Socotra Settlement Parties”). Among other things, the Socotra  
17 Settlement Agreement provides for the distribution to the Socotra Settlement Parties  
18 of certain of the proceeds from the sale of the real property commonly known as 2818  
19 E. 2nd Street, Vancouver, WA 98661 in full and final satisfaction of the Socotra  
Settlement Parties’ Claims against the Debtors. Further, in exchange for a release of  
any claims that the Debtors may have against the Socotra Settlement Parties, the  
Socotra Settlement Parties agreed to convert \$1,764,414.00 of their approximately  
\$3,200,000.00 Claim against the Debtors into DIP financing, as reflected in the  
Supplemental DIP Motion.

20 On July 19, 2024, the Bankruptcy Court entered an order approving entry into  
21 and performance under the Socotra Settlement Agreement. *See ECF No. 1140.*

22 **D. Exit Financing**

23 1. First Lien Exit Financing

24 On July 8, 2024, the Debtors and iCap DIP Finance Group LLC (the “First  
25 Lien Exit Lender”) entered into that certain *Exit Facility Commitment Letter*, which  
provides for the First Lien Exit Lender’s commitment to provide exit financing to the  
26 Debtors in the form of a \$5,000,000.00 term loan (the “First Lien Exit Financing”)  
27 in exchange for, among other things, a first priority lien on the Causes of Action and

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1 all proceeds thereof. The terms of the First Lien Exit Financing will be disclosed in  
2 the Plan Supplement.

3       2. **Tritalent Exit Financing**

4       On August 29, 2024, the Debtors filed a motion pursuant to Bankruptcy Code  
5 section 363(b) and Bankruptcy Rule 9019 seeking approval of a settlement agreement  
6 (the “Tritalent Settlement Agreement”) by and between the Debtors and Tritalent  
7 Funding Group, Inc. and Halton Co. (collectively, “Tritalent”). *See* ECF No. 1244.  
8 Among other things, the Tritalent Settlement Agreement provides that (i) the Debtors  
9 will pay Tritalent the net proceeds from the sale of the real property commonly  
10 known as 4318 South Settler Drive, Ridgefield, WA in full and final satisfaction of  
11 Tritalent’s Claims against the Debtors and (ii) Tritalent will provide \$500,000.00 in  
12 exit financing to the Debtors (the “Tritalent Exit Financing”)<sup>11</sup> in exchange for,  
13 among other things, junior liens on the Causes of Action and all proceeds thereof.  
14 The Tritalent Settlement Agreement also provides for mutual releases among the  
15 Debtors and Tritalent.

16       **E. Appointment of the Unsecured Creditors’ Committee**

17       On October 20, 2023, the U.S. Trustee appointed the Unsecured Creditors’  
18 Committee in these Chapter 11 Cases. *See* ECF No. 102. The initial members of the  
19 Unsecured Creditors’ Committee were Yongzhi Liang, Lin Lan Sun, Chunying Tian,  
20 Ruzhen Zhang, Zhuhua Li, Thomas Temple, and Elizabeth Plaza. *See* ECF No. 102.  
The members of the Unsecured Creditors’ Committee were amended twice. *See* ECF  
No. 112 (replacing Ruzhen Zhang with Ping Zhang), ECF No. 147 (replacing Ping  
Zhang with Huiman Zhang). The Unsecured Creditors’ Committee retained Bush  
Kornfeld LLP, as its bankruptcy counsel, B. Riley Advisory Services, as its financial  
advisor, and Corr Cronin LLP, as its special litigation counsel. *See* ECF Nos. 184  
(Bush Kornfeld Order), 186 (B. Riley Order), and 185 (Corr Cronin Order).

21       **F. Professional Fee Payments**

22       As of the filing of this Disclosure Statement, the total amounts owed and/or  
23 requested by the Professionals retained on behalf of the Debtors and the Unsecured  
24 Creditors’ Committee totals \$6,645,020.40. In accordance with the interim  
25 compensation procedures approved by this court [ECF No. 168], the Debtors have  
paid the following amounts to the Professionals.

26  
27       <sup>11</sup> The “Exit Financing” shall refer to the First Lien Exit Financing and the Tritalent Exit Financing.  
28

<b>Professional</b>	<b>Total Requested</b>	<b>Total Paid</b>
Buchalter	\$1,018,456.26	\$1,009,281.65
Bush Kornfeld LLP	\$535,989.23	\$274,534.44
Corr Cronin LLP	\$133,826.74	\$86,486.48
GlassRatner Advisory & Capital Group, LLC dba B. Riley Advisory Services	\$140,385.08	\$140,385.08
O'Melveny & Myers LLP	\$1,541,937.51	\$757,260.00
Paladin Management Group LLC	\$2,967,424.08	\$2,205,563.96
Pivot Group	\$307,001.50	\$0.00
<b>Total</b>	<b>\$6,645,020.40</b>	<b>\$4,473,511.61</b>

## G. United States Trustee

Gary Dyer, Esq. is the Assistant U.S. Trustee assigned to these Chapter 11 Cases. The Debtors and the Unsecured Creditors' Committee have worked cooperatively to address concerns and comments from the U.S. Trustee's office during these Chapter 11 Cases.

## H. Meeting of Creditors

The initial meeting of creditors under Bankruptcy Code section 341(a) was held remotely on November 17, 2023 at 9:30 a.m. At the initial meeting of creditors, the U.S. Trustee and creditors asked questions of a representative of the Debtors.

## I. Schedules of Assets and Liability and Statements of Financial Affairs

On or about November 15 and 22, 2023, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules and Statements").<sup>12</sup>

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<sup>12</sup> The Schedules and Statements are filed on each Debtor's individual case docket. See iCap Enterprises, Inc., Case No. 23-01243-WLH11, ECF No. 162; iCap Pacific NW Management, LLC Case No. 23-01261-WLH11, ECF No. 4; iCap Vault Management, LLC Case No. 23-01258-WLH11, ECF No. 4; iCap Vault, LLC Case No. 23-01256-WLH11, ECF No. 4; iCap Vault 1, LLC Case No. 23-01257-WLH11, ECF No. 4; Vault Holding 1, LLC Case No. 23-01265-WLH11, ECF No. 4; iCap Investments, LLC Case No. 23-01255-WLH11, ECF No. 4; iCap Pacific Northwest Opportunity and Income Fund, LLC Case No. 23-01248-WLH11, ECF No. 4; iCap Equity, LLC Case No. 23-01247-WLH11, ECF No. 4; iCap Pacific Income 4 Fund, LLC Case No. 23-01251-WLH11, ECF No. 4; iCap Pacific Income 5 Fund, LLC Case No. 23-01249-WLH11, ECF No. 4; iCap Northwest Opportunity Fund, LLC Case No. 23-01253-WLH11, ECF No. 4; 725 Broadway, LLC Case No. 23-01245-WLH11, ECF No. 4; Senza Kenmore, LLC Case No. 23-01254-WLH11, ECF No. 4; iCap Campbell Way, LLC Case No. 23-01250-WLH11, ECF No. 4; UW 17th Ave,

1           **J. Claims Bar Dates and Filed Claims**

2           On October 10, 2023, the Clerk of the Court filed the *Notice of Chapter 11*  
3           *Bankruptcy Case* establishing (i) December 8, 2023 as the deadline for Creditors  
4           (other than Governmental Units) to file proofs of Claim against the Debtors  
5           (including Claims arising under Bankruptcy Code section 503(b)(9)) (the “Initial Bar  
6           Date”) and (ii) March 27, 2024 as the deadline for Governmental Units to file proofs  
7           of Claim (the “Governmental Bar Date”). *See* ECF No. 73.

8           On November 16, 2023, the Debtors filed an *Ex Parte Motion for Order*  
9           *Vacating General Bar Date* [ECF No. 166], requesting that the Bankruptcy Court  
vacate the Initial Bar Date, which the Bankruptcy Court granted on November 17,  
2023 [ECF No. 170].

10          On May 22, 2024, the Debtors filed the *Debtors’ Ex Parte Motion for Order*  
11          *Establishing the Deadline to File Proofs of Claim* [ECF No. 925], which the  
Bankruptcy Court granted on May 24, 2024 [ECF No. 929] (the “Bar Date Order”). Pursuant to the Bar Date Order, the deadline for all non-governmental Creditors to file proofs of claim against the Debtors in these Chapter 11 Cases was July 10, 2024 at 5:00 p.m. (prevailing Pacific Time) (the “General Bar Date”). The General Bar Date applies to all persons and entities (excluding Governmental Units) holding Claims against the Debtors that arose or are deemed to have arisen before the respective Petition Date, including Secured Claims, unsecured Priority Claims (including, without limitation, Claims entitled to priority under Bankruptcy Code sections 507(a)(4), (5), and (8) and 503(b)(9)), and unsecured nonpriority Claims. The Bar Date Order did not modify the Governmental Bar Date.

12          As of the General Bar Date, approximately 345 proofs of Claim appear on the official claims register, although some of those Claims have been withdrawn or superseded by other Claims. The Debtors have not completed Claim reconciliation work and do not anticipate doing so before the Effective Date.

13          LLC Case No. 23-01267-WLH11, ECF No. 4; iCap Broadway, LLC Case No. 23-01252-WLH11, ECF No. 4; VH 1121 14th LLC Case No. 23-01264-WLH11, ECF No. 5; VH Senior Care LLC Case No. 23-01266-WLH11, ECF No. 4; VH Willows Townhomes LLC Case No. 23-01262-WLH11, ECF No. 5; iCap @ UW, LLC Case No. 23-01244-WLH11, ECF No. 4; VH 2nd Street Office, LLC Case No. 23-01259-WLH11, ECF No. 4; VH Pioneer Village LLC Case No. 23-01263-WLH11, ECF No. 4; iCap Funding LLC Case No. 23-01246-WLH11, ECF No. 4; iCap Management LLC Case No. 23-01268-WLH11, ECF No. 4; iCap Realty, LLC Case No. 23-01260-WLH11, ECF No. 4; Vault Holding, LLC Case No. 23-01270-WLH11, ECF No. 4; iCap Pacific Development LLC Case No. 23-01271-WLH11, ECF No. 5; iCap Holding LLC Case No. 23-01272-WLH11, ECF No. 6; iCap Holding 5 LLC Case No. 23-01273-WLH11, ECF No. 5; iCap Holding 6 LLC Case No. 23-01274-WLH11, ECF No. 4; Colpitts Sunset, LLC Case No. 23-01432-WLH11, ECF No. 5; CS2 Real Estate Development LLC Case No. 23-01434-WLH11, ECF No. 4; and iCap International Investments, LLC Case No. 23-01464-WLH11, ECF No. 4.

1           **K. Sales of Real Property**

2           During the Chapter 11 Cases, the Debtors have sought to maximize the value  
3 of their Estates by selling several parcels of real property owned by the Estates, in  
4 each case subject to Bankruptcy Court approval. As of the date hereof, the Debtors  
5 have filed the following motions to sell real property pursuant to Bankruptcy Code  
section 363:

- 6           • On November 27, 2023, the Debtors filed the *Debtors' Motion for (I) an Order (A) Approving Bidding Procedures for the Sale of Real Property; (B) Scheduling the Auction and Sale Hearing; and (C) Granting Related Relief; and (II) an Order Approving the Sale Free and Clear of All Claims, Liens, and Encumbrances* [ECF No. 187] for the Senza Kenmore Property. The order approving the sale was entered on March 4, 2024. See ECF No. 562.
- 7           • On January 5, 2024, the Debtors filed the *Debtors' Motion for an Order: (I) Approving the Sale of Real Property; and (II) Approving the Sale Free and Clear of All Claims, Liens, and Encumbrances* [ECF No. 249] for the Pioneer Village and 2nd Street Properties. The order approving the sale was entered on January 30, 2024. See ECF No. 361.
- 8           • On March 13, 2024, the Debtors filed the *Debtors' Motion for an Order (I) Approving the Sale of Real Property; and (II) Approving the Sale Free and Clear of All Claims, Liens, and Encumbrance* [ECF No. 607] for the 17th Avenue Property. The order approving the sale was entered on April 18, 2024. See ECF No. 762.
- 9           • The Debtors are negotiating the sale for the real property commonly  
known as 18416 Bothell Everett Hwy, Bothell, WA (the "CS2 Sale").  
In connection with the CS2 Sale, the Debtors may seek to dismiss the  
Chapter 11 Case for Debtor CS2 Real Estate Development, LLC.  
Dismissal of the CS2 Chapter 11 Case would not affect the treatment of,  
or Distributions on account of, any Claims under the Plan.

10           In furtherance of the Debtors' sale efforts, the Debtors filed the *Debtors' Motion for Order Establishing Procedures for Sale of Property of the Estates* [ECF No. 370] seeking approval of procedures to sell or transfer real property of the Debtors' Estates (the "Property Transaction Procedures"). The Bankruptcy Court approved the Transaction Sale Procedures [ECF No. 611] on March 14, 2024.

Pursuant to the Property Transaction Procedures, the Bankruptcy Court has approved the following sales of real property pursuant to Bankruptcy Code section 363:

- On April 4, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (1121 14th Avenue, Unit E, Seattle, WA 98122) [ECF No. 717], approving the sale of 1121 14th Avenue, Unit E, Seattle, WA 98122.
- On April 4, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (4906 S. Willow Street, Unit A Seattle, WA 98118) [ECF No. 718], approving the sale of 4906 S. Willow Street, Unit A Seattle, WA 98118.
- On April 4, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (4910 S. Willow Street, Unit B, Seattle, WA 98118) [ECF No. 719], approving the sale of 4910 S. Willow Street, Unit B, Seattle, WA 98118.
- On April 4, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (4918 S. Willow Street, Unit C, Seattle, WA 98118) [ECF No. 720], approving the sale of 4918 S. Willow Street, Unit C, Seattle, WA 98118.
- On April 4, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (1226 160th St. SW, Lynnwood, WA 98087) [ECF No. 721], approving the sale of 1226 160th St. SW, Lynnwood, WA 98087.
- On April 26, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (1117 14th Avenue, Unit A, Seattle, WA 98122) [ECF No. 814], approving the sale of 1117 14th Avenue, Unit A, Seattle, WA 98122.
- On April 26, 2024, the Bankruptcy Court entered the *Order Approving Sale of Property of the Estates Pursuant to Property Transaction Procedures* (1117 14th Avenue, Unit B, Seattle, WA 98122) [ECF No. 815], approving the sale of 1117 14th Avenue, Unit B, Seattle, WA 98122.

**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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1                   815], approving the sale of 1117 14th Avenue, Unit B, Seattle, WA  
2                   98122.

- 3                   • On April 26, 2024, the Bankruptcy Court entered the *Order Approving*  
4                   *Sale of Property of the Estates Pursuant to Property Transaction*  
5                   *Procedures (1119 14th Avenue, Unit C, Seattle, WA 98122)* [ECF No.  
6                   816], approving the sale of 1119 14th Avenue, Unit C, Seattle, WA  
7                   98122.
- 8                   • On April 26, 2024, the Bankruptcy Court entered the *Order Approving*  
9                   *Sale of Property of the Estates Pursuant to Property Transaction*  
10                  *Procedures (1117 14th Avenue, Unit D, Seattle, WA 98122)* [ECF No.  
11                  817], approving the sale of 1119 14th Avenue, Unit D, Seattle, WA  
12                  98122.
- 13                  • On May 15, 2024, the Bankruptcy Court entered the *Order Approving*  
14                  *Sale of Property of the Estates Pursuant to Property Transaction*  
15                  *Procedures (4912 S. Willow Street, Unit B, Seattle, WA 98118)* [ECF  
16                  No. 904], approving the sale of 4912 S. Willow Street, Unit B, Seattle,  
17                  WA 98118.
- 18                  • On August 15, 2024, the Bankruptcy Court entered the *Order Approving*  
19                  *Sale of Property of the Estates Pursuant to Property Transaction*  
20                  *Procedures (1231 Campbell Way, Bremerton, WA 98310)* [ECF No.  
21                  1179], approving the sale of 1231 Campbell Way, Bremerton, WA  
22                  98310.
- 23                  • On August 15, 2024, the Bankruptcy Court entered the *Order Approving*  
24                  *Sale of Property of the Estates Pursuant to Property Transaction*  
25                  *Procedures (4318 S. Settler Drive, Ridgefield, WA 98642)* [ECF No.  
26                  1180], approving the sale of 4318 S. Settler Drive, Ridgefield, WA  
27                  98642.
- 28                  • On August 7, 2024, the Debtors served parties with the *Transaction*  
29                  *Notice Pursuant to Property Transaction Procedures* for the sale of real  
30                  property located at 302 SW 146th Street, Burien, WA 98166 (the  
31                  “Burien Property”). On August 9, 2024, Redmond Funding Group, LLC  
32                  filed an objection to the sale of the Burien Property [ECF No. 1171].

28                  **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**  
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1           The Debtors intend to continue marketing certain of the real properties owned  
2 by the Estates and may sell additional properties prior to the Effective Date, subject  
3 to the Transaction Sale Procedures and Bankruptcy Court approval.

4           **L. Abandonment of the Airlink Membership Interests**

5           On October 2, 2023, the Debtors filed the *Emergency Motion for Entry of*  
6 *Interim and Final Orders (I) Authorizing the Debtors' Entry into a Consulting*  
7 *Agreement with Chris Christensen; and (II) Granting Related Relief* [ECF No. 17]  
8 (the “Consulting Agreement Motion”), which sought approval of a consulting  
agreement with Christensen.

9           In connection with the Consulting Agreement Motion, the Debtors agreed to  
10 “use commercially reasonable efforts to confirm that their interests in [Airlink]  
11 cannot reasonably be sold for more than *de minimis* value, net of costs of sale  
12 (including attorneys’ fees).” *See* Consulting Agreement Motion, ¶ 16. The Consulting  
13 Agreement Motion sought approval of an assignment of the interest of Airlink  
14 Holding, LLC (“Holding”) (referred to in the Consulting Agreement Motion as  
15 “Airlink”) to Christensen if the Debtors determined that Holding was of *de minimis*  
16 value, subject to a final order on the Consulting Agreement Motion.

17           As of the final hearing on the Consulting Agreement Motion, the Debtors had  
18 not yet determined whether the value of their interest in Holding was more than *de*  
19 *minimis*. Therefore, on October 5, 2023, the Bankruptcy Court entered the *Final*  
20 *Order Authorizing the Debtors' Entry into a Consulting Agreement with Chris*  
21 *Christensen, and Granting Related Relief* [ECF No. 153] (the “Consulting  
22 Agreement Order”), which provided two alternatives upon the completion of the  
23 Debtors’ diligence with respect to the value of Holding.

24           Specifically, if the Debtors determined that their interests in Holding could not  
25 be sold for more than a *de minimis* value, the Debtors would file a declaration in  
26 support of such determination along with a related notice and form of order  
27 authorizing the assignment of any interest in Holding to Christensen. If the Debtors  
determined that their interests in Holding exceeded a *de minimis* value, any  
disposition of Holding could be accomplished only through a subsequent motion and  
order. *See* Consulting Agreement Order at 2.

28           Through continued investigation of the Debtors’ pre-petition assets and  
financial affairs, the Debtors determined that: (1) the broker dealer license thought to  
be Holding’s only asset of material value was actually held by Airlink Markets, LLC  
(“Markets”), a wholly-owned subsidiary of Holding; and (2) the broker dealer license

1 was of greater than *de minimis* value. Because Holding was not itself in bankruptcy,  
2 its membership interests in Markets were not the assets of the Estates and could be  
3 sold by the Debtors.

4 To address the ownership issue, and to comply with the Bankruptcy Court’s  
5 requirements in the Consulting Agreement Order, on March 26, 2024, the Debtors  
6 filed the *Motion for Order: (1) Substantively Consolidating Airlink Holdings, LLC*  
*and Airlink Markets, LLC; (2) Authorizing the Sale of Airlink Markets, LLC Free and*  
*Clear of Liens, Claims, and Interests; and (3) Granting Related Relief* [ECF No. 654]  
7 (the “Airlink Sale Motion”). In the Airlink Sale Motion, among other things, the  
8 Debtors sought substantive consolidation of Markets into Holding so that the Debtors  
9 could effectively sell Holding’s membership interests in Markets (the “Airlink  
10 Membership Interests”) as assets of the Estates. The Bankruptcy Court entered an  
11 order granting the Airlink Sale Motion on April 23, 2024 [ECF No. 778] (the “Airlink  
12 Sale Order”).

13 Pursuant to the Airlink Sale Motion, closing on the sale of the Airlink  
14 Membership Interests involved a two-step process. After entry of the Airlink Sale  
15 Order, 20% of the Airlink Membership Interests were to be sold (*i.e.*, the “First  
16 Closing”). Thereafter, the parties were to work in good faith to ensure the filing of  
17 applications with FINRA for approval of the transfer of the remaining 80% of the  
18 Airlink Membership Interests. The “Second Closing” was set to take place shortly  
19 after FINRA granted approval. Under the Purchase and Sale Agreement entered into  
20 between Holding and Cathay Holding Group Co., Limited (the “Purchaser”), the  
21 Purchaser was required to “reimburse iCap Enterprises, Inc. and its affiliates for any  
and all expenses and other amounts incurred or assumed by iCap that arise directly  
or indirectly out of or otherwise relate to [Markets] and its continued operation . . .  
including, without limitation, rent, payroll, taxes, technology costs, regulatory  
expenses, audit and accounting expenses, required regulatory capital, legal fees and  
expenses and insurance expenses” (the “Carrying Costs”). See Purchase and Sale  
Agreement, ECF No. 654, Exh. A.

22 On March 6, 2024, while the Airlink Sale Motion was pending, the State of  
23 Washington Department of Financial Institutions Securities Division entered the  
24 *Summary Order to Suspend Registration and Notice of Intent to Revoke Registration,*  
*Deny Future Registration, Impose a Fine, and Charge Costs* (the “Summary Order”),  
25 which temporarily revoked Markets’ broker-dealer registration and denied future  
securities registrations for Markets. Despite that the Purchaser followed through with  
26 the First Closing, the Purchaser refused to begin the FINRA approval process due to  
the complications posed by entry of the Summary Order. The Purchaser also refused  
27

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1 to pay certain Carrying Costs required under the Purchase and Sale Agreement and  
2 began attempting to sell its rights under the Purchase and Sale Agreement, in  
3 contravention of its terms. Due to the failure of the Purchaser to pay the Carrying  
4 Costs, the directors and officers of Markets resigned, leaving Markets without  
management and the ability to operate.

5 The Debtors tried to reach a consensual resolution with the Purchaser by,  
6 among other things, lowering the original purchase price for the Airlink Membership  
7 Interests (subject to court approval). After extensive, unproductive negotiations, the  
8 Debtors determined in their business judgment that the Airlink Membership Interests  
9 had become overly burdensome and of inconsequential value and benefit to the  
10 Estates. For those reasons, on July 8, 2024, the Debtors gave the Purchaser notice of  
11 the Purchaser's repudiation of the Purchase and Sale Agreement. Pursuant to the  
12 Purchase and Sale Agreement, the Debtors retained the funds received on account of  
13 the First Closing and the original deposit.

14 The Debtors are exploring final ways to monetize the Debtors' interests in  
15 Holding and Markets, including, without limitation, the Airlink Membership  
16 Interests. Upon the Effective Date, any of the Debtors' remaining interests in Holding  
17 and Markets including, without limitation, the Airlink Membership Interests, will be  
18 deemed abandoned. The Debtors will also seek authority to dissolve Holding and  
19 Markets pursuant to the Confirmation Order.

## 20 M. Extension of Exclusivity Periods

21 On February 15, 2024, the Debtors filed the *Debtors' Motion to Extend the*  
22 *Debtors' Exclusive Periods to File and Solicit Votes on a Chapter 11 Plan* [ECF No.  
23 380] (the "First Exclusivity Motion"), requesting an extension of the Debtors'  
24 exclusive periods to (i) file a proposed chapter 11 plan (the "Plan Exclusivity  
25 Period") by 90 days, and (ii) solicit acceptances of the plan without competing plan  
26 filings (the "Solicitation Exclusivity Period") by 91 days. On March 13, 2024, the  
27 Bankruptcy Court entered an order granting the First Exclusivity Motion, extending  
28 (i) the Plan Exclusivity Period to May 15, 2024, and (ii) the Solicitation Exclusivity  
Period to July 15, 2024. See ECF No. 605.

On April 24, 2024, the Debtors filed the *Debtors' Second Motion to Extend*  
the *Debtors' Exclusive Periods to File and Solicit Votes on a Chapter 11 Plan* [ECF  
No. 787] (the "Second Exclusivity Motion"), seeking to further extend the Plan  
Exclusivity Period and the Solicitation Exclusivity Period, each by 61 days and 60  
days, respectively. On May 15, 2024, the Bankruptcy Court entered an order granting  
the Second Exclusivity Motion, extending (i) the Plan Exclusivity Period to July 15,

1 2024, and (ii) the Solicitation Exclusivity Period to September 13, 2024. *See* ECF  
2 No. 907.

3 On July 11, 2024, the Debtors filed the *Debtors' Third Motion to Extend the*  
4 *Debtors' Exclusive Periods to File and Solicit Votes on a Chapter 11 Plan* [ECF No.  
5 1072] (the "Third Exclusivity Motion"), seeking to further extend the Plan  
6 Exclusivity Period and the Solicitation Exclusivity Period, each by 45 days. On  
7 August 8, 2024, the Bankruptcy Court entered an order granting the Third Exclusivity  
Motion, extending (i) the Plan Exclusivity Period to August 29, 2024, and (ii) the  
Solicitation Exclusivity Period to October 28, 2024. *See* ECF No. 1165.

8 **N. SEC Investigation**

9 On January 24, February 27, and May 2, 2024, the SEC issued subpoenas to  
10 the Debtors pursuant to a formal order of investigation. The SEC's investigation is  
11 captioned *In the Matter of Certain iCap Securities* (SF-04623). The subpoenas seek,  
12 among other things, (1) financial information related to the Debtors and investment  
13 funds managed by the Debtors and Christensen, (2) marketing materials to be used  
14 for iCap and the funds it managed, (3) communications to, from, and about actual  
15 and potential Investors, (4) documents and communications about transactions  
between the Debtors, (5) documents about communications with auditors, and  
16 (6) documents and communications about the relationship between the iCap Entities  
and other entities.

17 **O. Shandong Yongchang Logistics Adversary Proceeding**

18 On June 27, 2024, Shandong Yongchang Logistics Group Co., Ltd.  
19 commenced an adversary proceeding against Debtor iCap Vault 1, LLC, seeking a  
20 declaratory judgment that certain funds in the amount of \$3,614,521.65 are held by  
21 the Debtor in trust for the plaintiff and are not property of the Debtor's Estate. *See*  
22 Adv. Proc. No. 24-80018. The Debtors are in the process of evaluating the claims  
asserted in the adversary proceeding and will be responding to the claims as  
necessary.

23 **P. Wilmington Adversary Proceeding**

24 On August 16, 2024, Wilmington Savings Fund Society, FSB and Lima One  
25 Capital commenced an adversary proceeding against Debtors VH 1121 14th LLC  
26 and VH Willows Townhomes, LLC, seeking declaratory relief with respect to the  
plaintiffs' Claims against the Debtors and the prepetition loans that are the basis for  
such Claims. *See* Adv. Proc. No. 24-80022. The Debtors are in the process of

1 evaluating the claims asserted in the Wilmington adversary proceeding and will be  
2 responding to the claims as necessary.

3 **Q. Plan Negotiations and Settlement Under the Plan**

4 Throughout these Chapter 11 Cases, the Debtors and their professionals have  
5 worked consensually with the Unsecured Creditors' Committee and other key  
6 constituencies to reach an agreement that would provide for a prompt and orderly  
7 path out of bankruptcy for the Debtors and would conserve the Estates' resources for  
the benefit of all Investors and other Creditors.

8 The negotiations were ultimately fruitful, as they resulted in the Debtors and  
9 the Unsecured Creditors' Committee reaching an agreement in principle regarding  
10 the fundamental terms of a chapter 11 plan. After many weeks of further discussion  
11 and negotiations the Plan Proponents finalized and filed the Plan, which incorporates  
the parties' settlement.

12 **ARTICLE IV.**  
13 **DETERMINATION THAT CHRISTENSEN OPERATED**  
**THE PREPETITION DEBTORS AS A PONZI SCHEME**

14 Upon filing these Chapter 11 Cases, the Debtors' professionals, working in  
15 cooperation with the Unsecured Creditors' Committee, began a robust investigation  
16 of the Debtors' books and records and prepetition activities to analyze the facts and  
17 circumstances surrounding the failure of the iCap business and potential causes of  
18 action related to such failure. The Debtors' investigation revealed that, in classic  
19 Ponzi scheme fashion, the prepetition Debtors were reliant on funds from new  
20 Investors to make the payments promised to existing Investors. When new  
investments dried up, the Debtors were unable to continue making required payments  
on the Debtors' debt obligations.

21 The iCap Entities are all directly or indirectly owned by Christensen.  
22 Christensen was formerly, but is no longer, the owner and CEO of the Debtors. As a  
result of the Debtors' investigation, the Debtors believe that Christensen used the  
23 prepetition Debtors to perpetrate a massive Ponzi scheme. The Debtors' prepetition  
business enterprise bears all the hallmarks of a Ponzi scheme:<sup>13</sup>  
24

25  
26 <sup>13</sup> The Plan will acknowledge and admit that the Debtors operated as a Ponzi scheme since at least the Ponzi Start Date.  
27 To the extent that the Bankruptcy Court does not confirm the Plan, the Plan Proponents reserve all of their respective  
rights (and/or defenses) respecting the characterization and the ramifications of the Debtors' prepetition transactions.  
28

- (i) Beginning no later than October 2018 through January 2023, Christensen used the web of iCap Entities, including the prepetition Debtors, to conduct a massive Ponzi scheme raising more than \$230 million from nearly 2,000 unsuspecting Investors.
  - (ii) iCap’s businesses operated with negative cash flow since inception. For example, Fund 1’s real estate investments lost approximately \$38 million through 2021, and Fund 2’s investments lost \$18.5 million through 2021.
  - (iii) The source of payments to initial iCap Investors was from cash infused by new iCap Investors. This is reflected in the declining returns for initial Investors as compared to later Investors.
  - (iv) iCap’s business revenue was not sufficient to continue operations and, accordingly, iCap relied upon increasing fundraising and commingling cash. Fundraising became the near-exclusive source for the Debtors’ capital. Between October 2018 and September 2023, fundraising activities represented more than 75% of total receipts (excluding intercompany advances), and were almost 10 times greater than revenues from real estate activities.
  - (v) The vast majority of funds received by iCap were from Investors and external lenders rather than generated through business operations.
  - (vi) Deposits to the iCap Entities were largely comprised of money from Investors (49.4%), intercompany transfers (34.9%), and third-party loans (9.6%), more so than from business operations (6.0%).
  - (vii) To attract new Investors, iCap management repeatedly disseminated false and misleading financial information through quarterly newsletters and investment calls.
  - (viii) Rather than structure its real estate investments as equity investments, iCap chose to raise capital from Investors through privately placed debentures under which Investors were promised interest rates ranging from 6% to 15%.
  - (ix) iCap consistently encouraged Investors to “roll over” their investments, rather than be paid in full at maturity. For example, when Fund 1 and Fund 2 matured in December 2016 and December 2017, respectively, iCap was unable to repay either Fund’s debentures. After several maturity date extensions, iCap gave Investors the option to “roll over” their debentures into the newly created Fund 3.
  - (x) Fund 3 never owned or invested in real estate projects directly. Fund 3 was marketed as a “fund of funds” that owned equity interests in Funds 1 and 2 and would benefit from the income generated from those funds.

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1           The Debtors' investigation was further supported by a forensic accounting  
2 professional, Jeffrey H. Kinrich of Analysis Group, who is a certified public  
3 accountant, with extensive experience investigating and testifying on financial and  
4 accounting issues related to distressed companies. He reached similar conclusions:

- 5           (i) The majority of iCap's funds from October 2018 to September 2023  
6           were from fund subscribers and loans from third parties, rather than cash  
7           generated from its business operations.
- 8           (ii) The majority of iCap's funds from October 2018 to September 2023  
9           were used to make interest and principal payments to subscribers rather  
10           than investing in real estate and related operations.
- 11           (iii) iCap's real estate business from 2014 through 2022 did not generate  
12           sufficient cash flow to meet its interest and principal obligations to  
13           subscribers.
- 14           (iv) There were several large dollar transfers between iCap Entities from  
15           October 2018 to September 2023, indicating that subscriber funds from  
16           one entity were used to pay subscribers in another entity. This is  
17           indicative of commingling.
- 18           (v) iCap could only meet its obligations to repay its subscribers using  
19           proceeds from its real estate business if its real estate investments  
20           generated unrealistic (and unrealized) returns.
- 21           (vi) iCap failed to invest subscribers' funds in the promised investments or  
22           as otherwise represented to subscribers.
- 23           (vii) Later Investors in iCap received lower returns than earlier Investors.

24           Christensen is no longer in control of the Debtors and no longer has any  
25           involvement with the Debtors or these Chapter 11 Cases. The Plan described by this  
26           Disclosure Statement has been formulated by the Debtors, overseen by Lance Miller,  
27           the Debtors' CRO and the Debtors' independent Board of Directors, and the  
28           Unsecured Creditors' Committee, and each of their advisors, all of whom are  
completely independent of Christensen.

MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION

1

**ARTICLE V.**  
**SUMMARY OF THE JOINT CHAPTER 11 PLAN**

2

3 This section provides a summary of the structure and means for  
4 implementation of the Plan and the classification and treatment of Claims and Equity  
5 Interests under the Plan and is qualified in its entirety by reference to the Plan (as  
6 well as the exhibits thereto and definitions therein). The statements contained in this  
7 Disclosure Statement do not purport to be precise or complete statements of all the  
8 terms and provisions of the Plan or documents referred to therein, and reference is  
9 made to the Plan and to such documents for the full and complete statement of such  
10 terms and provisions.

11 The Plan itself and the documents referred to therein control the actual  
12 treatment of Claims against, and Equity Interests in, the Debtors under the Plan and  
13 will, upon the occurrence of the Effective Date, be binding on all Holders of Claims  
14 against, and Equity Interests in, the Debtors.

15

**A. Purpose and Effect of the Plan**

16 Chapter 11 of the Bankruptcy Code allows a debtor to formulate and  
17 consummate a plan of liquidation. *See* 11 U.S.C. § 1129(a)(11). A plan of liquidation  
18 sets forth the means for satisfying claims against and equity interests in a debtor.  
19 Confirmation of a plan of liquidation by a bankruptcy court makes that plan binding  
20 on the debtor and any creditor of or interest holder in the debtor, whether or not such  
21 creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives  
22 or retains any property under the plan.

23 The Plan provides for the Distribution of the proceeds of the liquidation of all  
24 Estate Assets to Investors and other Creditors as contemplated under the Plan. More  
25 specifically, the Plan provides for the creation and funding of the iCap Trust to  
administer and liquidate all remaining property of the Debtors, including (i) any real  
properties owned by the Debtors immediately prior to the Effective Date and (ii) the  
iCap Trust Actions, which include, among other things, any and all causes of action,  
claims, remedies, or rights that may be brought by or on behalf of the Debtors or the  
Estates under Bankruptcy Code sections 542, 544, 547, 548, 549, 550, 551, or 553,  
or under related state or federal statutes, or pursuant to any theory or cause of action  
under common law, regardless whether such action has been commenced prior to the  
Effective Date.

26 Under the Plan, Claims against, and Equity Interests in, the Debtors are divided  
27 into Classes according to their relative seniority and other criteria. If the Plan is

1 confirmed by the Bankruptcy Court and consummated, the Claims and Equity  
2 Interests of the various Classes will be treated in accordance with the provisions in  
3 the Plan for each such Class and the iCap Trust will make Distributions as provided  
4 in the Plan.

5

## 6 **B. Comprehensive Compromise and Settlement Under the Plan**

7

8 Pursuant to Bankruptcy Code sections 1123(a)(5), 1123(b)(3), and 1123(b)(6),  
9 as well as Bankruptcy Rule 9019, and in consideration for the Distributions and other  
10 benefits provided under the Plan, the provisions of the Plan will constitute a good  
11 faith compromise and settlement of all claims and controversies relating to the rights  
12 that a Holder of a Claim or an Equity Interest may have against any Debtor with  
13 respect to any Claim, Equity Interest, or any Distribution on account thereof, as well  
14 as of all potential Intercompany Claims, Intercompany Liens, and Causes of Action  
against any Debtor. The entry of the Confirmation Order will constitute the  
Bankruptcy Court's approval, as of the Effective Date, of the compromise or  
settlement of all such claims or controversies and the Bankruptcy Court's finding that  
all such compromises or settlements are (i) in the best interest of the Debtors, the  
Estates, and their respective property and stakeholders; and (ii) fair, equitable, and  
reasonable.

15 The Plan Proponents believe that the comprehensive compromise and  
16 settlement to be effected by the Plan is appropriate for several reasons and intend to  
request that the Bankruptcy Court approve such compromise and settlement. The  
17 Plan provides a mechanism to resolve the myriad complex legal issues and disputes  
present in these Chapter 11 Cases and to ultimately make Distributions to Creditors  
18 in a timely and orderly fashion.

19 The Plan Proponents are strongly of the view that all elements of the  
20 comprehensive compromise and settlement to be effected under the Plan are superior  
21 to the disorderly and uncertain alternatives. The terms of the global resolution under  
the Plan were heavily negotiated by the Debtors and the Unsecured Creditors'  
22 Committee, each of which acted at arm's length and had the benefit of sophisticated  
23 external advisers.

24 The Plan Proponents believe that consideration of the foregoing factors  
25 demonstrates that the terms of the comprehensive compromise and settlement to be  
effected by the Plan are fair and reasonable, and that its approval is in the best  
26 interests of the Estates and all stakeholders. The Plan Proponents will provide further  
evidence and argument supporting approval of this comprehensive compromise and  
27 settlement, including the elements detailed above, at the Confirmation Hearing.

28

## **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

1        Among those many disputed issues that will be resolved through the Plan are  
2 the following complex matters, any one of which could be the subject of years of  
3 expensive, complicated, and uncertain litigation.

4        1.     Substantive Consolidation Issues

5        Substantive consolidation is a construct of federal common law, emanating  
6 from equity, which treats separate legal entities as if they were merged into a single  
7 survivor left with all the cumulative assets and liabilities, save for inter-entity  
8 liabilities, which are erased. *See, e.g., In re Mihranian*, 937 F.3d 1214, 1216 (9th Cir.  
9 2019) (quoting *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000)); *In re Owens*  
10 *Corning*, 419 F.3d 195, 205 (3d Cir. 2005). Bankrupt entities can be substantively  
11 consolidated either on a consensual basis under a chapter 11 plan, or on a non-  
12 consensual basis if (i) prepetition they disregarded entity separateness so  
13 significantly their creditors relied on the breakdown of entity borders and treated  
14 them as one legal entity or (ii) postpetition their assets and liabilities are so scrambled  
15 that separating them is prohibitive and harms all creditors. *See id.* at 210.

16        In these Chapter 11 Cases, a compelling argument could be made for complete  
17 substantive consolidation of all the Debtors. Although Creditors generally may not  
18 have treated all of the Debtors as one legal entity, there is substantial commingling  
19 of assets and liabilities among the Debtors. *See In re Bonham*, 229 F.3d 750, 764-65  
20 (9th Cir. 2000). The Debtors believe it is impossible to trace the flow of funds with  
21 respect to the Debtors' prepetition transactions since the majority of the proceeds  
22 received were commingled and distributed without regard to corporate formalities,  
23 which entanglement warrants substantive consolidation of all the Debtors. Moreover,  
24 the Chapter 11 Cases are unique—the perpetration of a fraudulent scheme by a  
25 common corporate enterprise, one that in the process did not keep accurate records  
of the multitude of intercompany transactions that have occurred, making an  
unscrambling of the enterprise's accounts impossible—but that has justified  
substantive consolidation in other cases. *See, e.g., In re Bonham*, 229 F.3d at 764-65  
(consolidating entities in Ponzi scheme case); *In re DBSI, Inc.*, Case No. 08-12687,  
ECF No. 5924 (Bankr. D. Del. Jan. 19, 2010) (same); *In re Bernard L. Madoff*  
*Investment Securities LLC*, No. 08-01789, ECF No. 252 (Bankr. S.D.N.Y. June 10,  
2009) (same). Put differently, the particular facts and circumstances of these Chapter  
11 Cases present unique arguments about whether and to what extent substantive  
consolidation is warranted.

26        On the Effective Date, the Debtors, other than the Excluded Debtors with  
27 respect to Claims in Classes 2B and 2C, will be substantively consolidated pursuant  
28 to Bankruptcy Code sections 105(a), 541, 1123, and 1129; *provided, however*, that

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1 the Debtors or iCap Trustees, as applicable, reserve the right to effectuate substantive  
2 consolidation of the Excluded Debtors after the Claims in Classes 2B and 2C are  
3 resolved upon filing notice with the Bankruptcy Court. As a result of the substantive  
4 consolidation, on the Effective Date, all property, rights, and claims of the Debtors  
5 and all Claims against the Debtors (other than Claims in Classes 2B and 2C) will be  
6 deemed to be pooled for purposes of Distributions under the Plan and, in the iCap  
7 Trustees' discretion, other purposes. Further, as a result of this substantive  
8 consolidation, all Claims between and among the Debtors will be cancelled. Holders  
9 of Allowed Claims shall be entitled to only one satisfaction on account of such  
10 Claims, and any contingent or otherwise duplicative Claims against one or more of  
the Debtors based upon claims for which one or more of the Debtors are also liable  
will be disallowed. Holders of Claims in Classes 2B and 2C shall be entitled to  
recover up to the full amount of their Allowed Secured Claim from the sale proceeds  
for their Collateral.

11 Entry of the Confirmation Order will constitute the approval, pursuant to  
12 Bankruptcy Code sections 105(a), 541, 1123, and 1129, of the substantive  
13 consolidation of the Debtors in the manner set forth in the Plan; *provided, however,*  
14 that while the Debtors will be substantively consolidated for purposes of Distribution  
15 to creditors, such that all Investors shall have Claims against a single pool of the  
16 Debtors' consolidated assets, the actual substantive consolidation of entities,  
17 particularly for tax purposes, will be at the option of the Debtors or the iCap Trust,  
as applicable. Notwithstanding such substantive consolidation, however, fees  
payable pursuant to 28 U.S.C. § 1930 will be due and payable by each individual  
Debtor through the Effective Date.

18 Substantive consolidation under the Plan will not affect, without limitation,  
19 any defenses or rights the Debtors or the iCap Trust may have to any Claim, Cause  
20 of Action, or Avoidance Action, including the ability to assert a counterclaim.

21 Any Intercompany Claims that could be asserted by one Debtor against another  
22 Debtor will be extinguished immediately before the Effective Date with no separate  
23 recovery on account of any such Claims and any Intercompany Liens that could be  
24 asserted by one Debtor regarding any Estate Assets owned by another Debtor will be  
25 deemed released and discharged on the Effective Date; *provided, however,* that solely  
26 with respect to any Secured Claim of a non-debtor as to which the associated Lien  
27 would be junior to any Intercompany Lien, the otherwise released Intercompany  
Claim and associated Intercompany Lien will be preserved for the benefit of, and  
may be asserted by the iCap Trust as to any Collateral so as to retain the relative  
priority and seniority of such Intercompany Claim and associated Intercompany Lien.

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1        The Disclosure Statement and the Plan together form a request for the  
2 Bankruptcy Court's approval of the substantive consolidation outlined in the Plan.  
3 Unless a Creditor, purportedly impacted by this consolidation, submits a written  
4 objection before the Plan's confirmation deadline, the consolidation described in the  
5 Plan may receive approval during the Confirmation Hearing. Should objections be  
6 filed within the specified timeframe, the Bankruptcy Court will address such  
7 objections at the Confirmation Hearing.

8        If the Bankruptcy Court determines that substantive consolidation of any given  
9 Debtors is not appropriate, then the Debtors may request that the Bankruptcy Court  
10 otherwise confirm the Plan and approve the treatment of and Distributions to the  
11 different Classes under the Plan on an adjusted, Debtor-by-Debtor basis.  
12 Furthermore, the Debtors reserve their rights (i) to seek confirmation of the Plan  
13 without implementing substantive consolidation of any given Debtor, and, in the  
14 Debtors' reasonable discretion after consultation with the Unsecured Creditors'  
15 Committee, to request that the Bankruptcy Court approve the treatment of and  
16 Distributions to any given Class under the Plan on an adjusted, Debtor-by-Debtor  
17 basis; (ii) to seek substantive consolidation of the Excluded Debtors; and (iii) after  
18 consultation with the Unsecured Creditors' Committee, to seek to substantively  
19 consolidate all Debtors into iCap Enterprises, Inc. if all impaired Classes entitled to  
20 vote on the Plan vote to accept the Plan.

21        Consistent with the substantive consolidation contemplated by the Plan and in  
22 order to reduce administrative costs, on the Effective Date, some the Debtors may be  
23 dissolved automatically without the need for any corporate action or approval,  
24 without the need for any corporate filings, and without the need for any other or  
25 further actions to be taken on behalf of such dissolving Debtor or any other Person  
26 or any payments to be made in connection therewith.

27        This proposed substantive consolidation is the result of careful analysis and  
28 key stakeholder negotiation regarding ownership, operational entanglements, and  
29 creditor expectations based on the creditor's prepetition dealings with the Debtors,  
30 which makes it an appropriate element of a comprehensive plan settlement. *See In re*  
*Abeinsa Holding, Inc.*, 562 B.R. 265, 279-81 (Bankr. D. Del. 2016).

31        2. Ponzi Scheme Issues

32        Additional disputes and possible litigation could arise regarding whether the  
33 Debtors were operating a Ponzi scheme, when that scheme began, and the  
34 implications of such conduct.

1           The Plan Proponents will seek findings in the Confirmation Order (the “Ponzi  
2 Findings”) that (i) beginning no later than the Ponzi Start Date through the conclusion  
3 of the prepetition time period analyzed by the CRO and his advisors (which, for the  
4 avoidance of doubt, ended prior to the retention of new counsel and financial advisors  
5 by the Debtors in July 2023), the iCap enterprise operated as a Ponzi scheme raising  
6 approximately \$230 million from over 1,800 Investors in the United States and  
7 abroad; and (ii) the Ponzi scheme involved the payment of purported returns to  
existing Investors from funds contributed by new Investors. The Plan Proponents are  
not seeking Ponzi Findings that would be binding on any other court or governmental  
or regulatory authority.

8           This comprehensive compromise and settlement is a critical component of the  
9 Plan and is designed to provide a resolution of the innumerable disputed  
10 intercompany and intercreditor Claims, Liens, and Causes of Action that otherwise  
11 could take years to resolve, which would delay and undoubtedly reduce the  
Distributions that ultimately would be available for all Creditors.

12          Following a judicial determination that the Debtors were operating a Ponzi  
13 scheme, any payments of “interest” or other consideration that was transferred from  
14 any Person to an Investor, during the period before the Petition Date could potentially  
be avoided and recovered as an “actual” fraudulent transfer. *See, e.g., Donell v.  
15 Kowell*, 533 F.3d 762, 770-72 (9th Cir. 2008); *AFI Holding, Inc. v. Mackenzie*, 525  
16 F.3d 700, 708-09 (9th Cir. 2008); *Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir.  
2011); *Geltzer v. Barish (In re Geltzer)*, 502 B.R. 760, 770 (Bankr. S.D.N.Y. 2013);  
17 *Fisher v. Sellis (In re Lake States Commodities, Inc.)*, 253 B.R. 866, 871-72 (Bankr.  
N.D. Ill. 2000).

19          The Plan Proponents’ legal position is that entry of the Confirmation Order  
20 and the making of the Ponzi Findings therein may have a preclusive effect in future  
proceedings before the Bankruptcy Court. The Plan Proponents fully reserve the  
21 ability to advance that legal position in subsequent litigation in the Bankruptcy Court.  
Moreover, upon entry of the Confirmation Order and the making of the Ponzi  
22 Findings, the Bankruptcy Court is determining that the iCap enterprise operated as a  
Ponzi scheme. Therefore, the Ponzi Findings, if asserted and relied on in proceedings  
23 in the Bankruptcy Court, may create a legal presumption that any payments to third  
parties during the Ponzi period were done with actual intent to hinder, delay, or  
defraud creditors. Accordingly, any such transfer could be avoided and recovered as  
24 an “actual” fraudulent transfer.

26          The iCap Trustees will have the discretion, subject to the iCap Trust  
27 Agreement, to determine whether and how to make demand upon, or sue, Investors

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1 liable for a Net Prepetition Investor Recovery, including, but not limited to, the  
2 discretion not to bring suit or make a demand because of the Investor's financial  
3 hardship. This discretion will be exercised in accordance with guidelines developed  
4 by the iCap Trustees in consultation with the iCap Trust Supervisory Board subject  
5 to the iCap Trust Agreement. No party should assume that they will be entitled to the  
6 exercise of such discretion. With respect to a specific Investor, the Net Prepetition  
7 Recovery means (a) the total Cash value remitted to the Investor from the Ponzi Start  
8 Date until the Petition Date (whether the payment was considered a return on the  
investment, interest, a referral fee, or a repayment of principal), minus (b) the total  
Cash value invested prepetition as principal by the Investor, (provided that the value  
of (a) is greater than the value of (b)), capped by the amount of total Cash value  
remitted to the Investor.

Nothing in the Plan will impair the right of Investors to independently pursue claims in which they have independent legal standing against third parties that are unique to such Investors ("Individual Investor-Specific Claims"). By way of example, and not limitation, such unique claims include claims based on loss of lien or loss of lien priority, claims against Investor's professional advisors, claims against retirement servicers and similar claims that may be asserted based on such Investor's particular circumstances. The Individual Investor-Specific Claims do not include Investor Claims common to all Investors and/or claims to recover commissions or referral fees paid by the Debtors to third parties in connection with an Investor's investment with the Debtors.

For purposes of the Debtors' Plan, any Ponzi Finding by this court, including any finding of a Ponzi scheme or a Ponzi Start Date, shall not be preclusive nor binding on Umpqua Bank in any other court or governmental or regulatory authority, and neither the Debtors, the Unsecured Creditors Committee, the iCap Trust, nor the iCap Trustees will seek to enforce the same against Umpqua Bank in this bankruptcy court. In addition, to the extent the Debtors are substantively consolidated as of the Effective Date, such substantive consolidation shall not affect or diminish any defenses or rights of Umpqua Bank with respect to any claims associated with the Debtors or any individual Debtor, including any deposit accounts held by a Debtor at Umpqua Bank. The Plan Proponents acknowledge and agree that: Umpqua Bank is not a Creditor or party to this proceeding, that Umpqua Bank has not had a full or fair opportunity to litigate any Ponzi Findings to a final order or judgment, and that no claims have been specifically asserted against Umpqua Bank, or otherwise adjudicated in any manner in relation to the Plan or through Confirmation of the Plan. The above reservation will be included in the Confirmation Order in conjunction with the provisions of the Confirmation Order that include a Ponzi Finding.

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1           **C. Estimated Recoveries for Holders of Investor Claims and General**  
2           **Unsecured Claims**

3           The Plan Proponents estimate that Holders of Allowed Investor Claims and  
4           Allowed General Unsecured Claims in these Chapter 11 Cases should recover  
5           approximately 1–34% of the total amount of their Investor Claims or General  
6           Unsecured Claims. For further details regarding estimated recoveries, please refer to  
the Recovery Analysis attached as **Exhibit C** to the Disclosure Statement.

7           The Plan Proponents have calculated the foregoing ranges of projected  
8           recoveries taking into account the following variables: (i) the total estimated amount  
9           of Investor Claims and General Unsecured Claims, in accordance with filed Claims  
10          and the Debtors' Schedules and (ii) the total estimated amount of value expected to  
be available for Distributions to iCap Trust Beneficiaries in accordance with the Plan  
and the Recovery Analysis.

11          It is important to emphasize that many factors will bear on the amount of Cash  
12          available for Distributions to iCap Trust Beneficiaries. The Cash available for  
13          Distributions consists or will consist primarily of (i) the Cash in the Estates on the  
Effective Date, after payment, allocation, or reserve in accordance with the Plan for  
14          unpaid or unutilized amounts for iCap Trust Funding; (ii) Cash realized after the  
Effective Date from the sale, collection, or other disposition of the Estates Assets;  
15          and (iii) Cash realized by the iCap Trustees from the prosecution of the iCap Trust  
Actions. However, this Cash has been or will be reduced by, among other things,  
16          (i) the Distributions to be made under the Plan with respect to Allowed  
Administrative Expense Claims, Allowed Claims of Professional Persons, Allowed  
17          Priority Tax Claims, Allowed Secured Claims, and Allowed Priority Claims;  
18          (ii) certain statutory and other fees payable in connection with the Chapter 11 Cases;  
19          and (iii) the iCap Trust Expenses. Only after these amounts have been paid or  
20          reserved will there be any Available Cash available for periodic Distributions to be  
made to the iCap Trust Beneficiaries.

22           **D. Treatment of Claims and Equity Interests**

23          The treatment of all Allowed Claims and Allowed Equity Interests shall be as  
24          follows:

25          1. Unclassified Claims

26          a. *Administrative Expense Claims.* Administrative Expense Claims  
27          incurred in the ordinary course of the Debtors' business following

the Petition Date (including fees owed to the CRO and/or either of Paladin Management Group, LLC and Pivot Management Group, LLC) shall be paid in the ordinary course of business in accordance with the terms and conditions of the particular agreements governing such obligations (as such terms were modified by any orders approving such agreements), or on such other terms as the Holder of such Claim and the Debtors (prior to the Effective Date) or the iCap Trustees (from the Effective Date forward) shall agree to in writing. All other Administrative Expense Claims, including Claims of Professional Persons, shall be paid on the later of the Effective Date or the date each such Claim becomes an Allowed Claim or on such other terms as the Holder of such Claim and the Debtors (prior to the Effective Date) or the iCap Trustees (from the Effective Date forward) shall agree to in writing. Claims arising under 28 U.S.C. § 1930 shall be paid as required by that statute.

- (i) Administrative Expense Claims Bar Date. Administrative expense requests asserting Administrative Expense Claims arising from the Petition Date through and including the Effective Date, excluding (a) Claims of Professional Persons in the Chapter 11 Cases and (b) claims arising in the ordinary course of business, must be filed no later than 30 days after the notice of the Effective Date is filed with the Bankruptcy Court or such later date as may be established by order of the Bankruptcy Court.
  - (ii) Final Fee Applications. All final requests for compensation or reimbursement of Professional Persons retained in these Chapter 11 Cases for services performed and expenses incurred prior to the Effective Date shall be filed and served on: (a) the iCap Trustees, (i) Pivot Management Group, LLC, 1230 Rosecrans Ave., Suite 530, Manhattan Beach, CA 90266 (Attn: Lance Miller (Lance.miller@pivotgrp.com)) and (ii) B. Riley Advisory Services, 19800 MacArthur Boulevard, Suite 820, Irvine, CA 92612 (Attn: Seth Freeman (SFreeman@brileyfin.com)); (b) counsel to the Debtors, O'Melveny & Myers LLP (i) 400 South Hope Street, Suite 1900, Los Angeles, CA 90071 (Attn: Julian Gurule

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(jgurule@omm.com)) and (ii) 1301 Avenue of the Americas, Suite 1700, New York, NY 10019 (Attn: Diana Perez (dperez@omm.com)); (c) counsel to the Unsecured Creditors' Committee, (i) Bush Kornfeld LLP, 601 Union Street, Suite 5000, Seattle, WA 98101 (Attn: Armand J. Kornfeld (jkornfeld@bskd.com) and Aimee S. Willig (awillig@bskd.com)) and (ii) Corr Cronin LLP, 1015 Second Ave., Floor 10, Seattle, WA 98104 (Attn: John T. Bender (jbender@corrcronin.com)); (d) the Office of the United States Trustee, United States Department of Justice, 920 West Riverside Avenue, Room 593, Spokane, WA 99201 (Attn: Gary W. Dyer (Gary.W.Dyer@usdoj.gov)); and (e) such other Persons who are designated by the Bankruptcy Rules, the Confirmation Order, or other order of the Bankruptcy Court, by no later than sixty (60) days after the Effective Date, unless otherwise agreed by the Debtors or the iCap Trustees, as applicable. Objections to any Claims of Professional Fees must be filed with the Bankruptcy Court and served on the iCap Trustees and the applicable Professional Person no later than fourteen (14) days after service of such applicable final fee application, unless otherwise ordered by the Bankruptcy Court. After Notice and Hearing in accordance with the procedures established by the Bankruptcy Code and any prior orders of the Bankruptcy Court in the Chapter 11 Cases, the Allowed amounts of such Claims shall be determined by the Bankruptcy Court and, once approved by the Bankruptcy Court, shall be promptly paid in Cash.

- b. *Priority Tax Claims.* Allowed Priority Tax Claims shall be paid, at the iCap Trust's option, as follows: (i) Cash equal to the unpaid portion of such Allowed Priority Tax Claim on the later of the Effective Date and thirty (30) calendar days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (ii) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable nonbankruptcy law as of the calendar month in which the Effective Date occurs (*provided* that such election shall be without prejudice to the right to prepay any such Allowed Priority

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Tax Claim in full or in part without penalty); or (iii) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the iCap Trust shall have agreed upon in writing.

- c. *Supplemental DIP Claims.* On the Effective Date, (i) all obligations of the Debtors under the Supplemental DIP Credit Agreement shall be assumed by the iCap Trust; (ii) all Liens and security interests granted to secure the Debtors' obligations under the Supplemental DIP Credit Agreement shall remain in place and shall be otherwise subject to the terms and conditions of the Supplemental DIP Credit Agreement and any related subordination terms; and (iii) the legal, equitable, and contractual rights of the parties under the Supplemental DIP Credit Agreement shall be unaltered by the Plan.

## 2. Classified Claims and Interests

a. *Class 1: Priority Claims*

Class 1 consists of Priority Claims. Class 1 is unimpaired and deemed to accept the Plan.

On the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of such Allowed Priority Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Allowed Priority Claim, either (a) Cash from the iCap Trust equal to the unpaid portion of such Allowed Priority Claim or (b) such other less favorable treatment from the iCap Trust to which such Holder and the iCap Trust shall have agreed upon in writing.

b. *Class 2: Secured Claims*

Class 2 consists of the following sub-classes of Secured Claims:

**(i) Class 2A: UW 17th Ave, LLC Secured Claims**

- (A) Class 2A.1 Studio 19 Architects Secured Claim
  - (B) Class 2A.2 UW 17th Davido Consulting Group
  - (C) Class 2A.3 Dhillon Secured Claim

- (ii) **Class 2B: VH 1121 14th LLC Secured Claims**
    - (A) Class 2B.1 14<sup>th</sup> Wilmington Savings Fund Secured Claim
  - (iii) **Class 2C: VH Willows Townhomes, LLC Secured Claims**
    - (A) Class 2C.1 Willows Wilmington Savings Secured Claim
  - (iv) **Class 2D: VH Senior Care, LLC Secured Claims**
    - (A) Class 2D.1 Redmond Funding Group Secured Claim
  - (v) **Class 2E: 725 Broadway, LLC Secured Claims**
    - (A) Class 2E.1 Christopher Jones Architects Secured Claim
    - (B) Class 2E.2 Broadway Davido Consulting Secured Claim
    - (C) Class 2E.3 Malsam Tsang Engineering Secured Claim
    - (D) Class 2E.4 Broadway Davido Consulting Secured Claim
    - (E) Class 2E.5 Broadway Oak Hills Construction LLC
  - (vi) **Class 2F: Senza Kenmore, LLC Secured Claims**
    - (A) Class 2F.1 Van Hoof Construction Secured Claim
    - (B) Class 2F.2 T.S. Dance Construction Secured Claim
  - (vii) **Class 2G: iCap Campbell Way, LLC Secured Claims**
    - (A) Class 2G.1 Campbell Davido Consulting Secured Claim
    - (B) Class 2G.2 Deed of Trust of Pacific NW Opportunity & Income Fund, LLC
  - (viii) **Class 2H: VH Pioneer Village, LLC Secured Claims**
    - (A) Class 2H.1 Tritalent Funding Group Secured Claim
  - (ix) **Class 2I: CS2 Real Estate Development Secured Claims**
    - (A) Class 2I.1 BRMK Management Secured Claim
    - (B) Class 2I.2 United Rentals Secured Claim
    - (C) Class 2I.3 Sunbelt Rentals Secured Claim
    - (D) Class 2I.4 CS2 Oak Hills Construction Secured Claim

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**BLACK HELTERLINE LLP**  
805 SW BROADWAY  
SUITE 1900  
PORTLAND, OR 97205  
TELEPHONE: 503 224-5560

(E) Class 2I.5Rexel USA, Inc. dba Platt Electric Supply  
Claim

**(x) Class 2J: Secured Real Property Tax Claims**

Class 2 is unimpaired and deemed to accept the Plan.

Except as explicitly provided for in the Plan, the legal, equitable, and contractual rights of Holders of Allowed Secured Claims are unaltered by the Plan, and, notwithstanding substantive consolidation of the Debtors and vesting of the iCap Trust Assets in the iCap Trust, the Liens of the Holders of Allowed Secured Claims will continue to attach to their respective Collateral, *provided* that all such Claims shall remain subject to any and all defenses, counterclaims, and setoff or recoupment rights with respect thereto. On the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim, at the option of the Debtors or the iCap Trust, either (a) the net proceeds from the sale of the Collateral securing such Allowed Secured Claim; *provided, however,* that if the sale of the Collateral securing an Allowed Secured Claim closes after the occurrence of the Effective Date, the payment of the net proceeds shall be delivered to the Holder of the Allowed Secured Claim within thirty (30) calendar days of the closing of such sale, (b) the surrender of the Collateral securing such Allowed Secured Claim, or (c) such other less favorable treatment from the iCap Trust to which such Holder and the iCap Trust shall have agreed upon in writing. Pending allowance of a Secured Claim, the Debtors or the iCap Trust, as applicable, will segregate the proceeds from the sale of the Collateral securing such Secured Claim in the individual Secured Claims Reserve for the Holder of such Claim.

c. *Class 3: Investor Claims*

Class 3 consists of Investor Claims, as more particularly described below. Class 3 is impaired under the Plan and entitled to vote on the Plan.

In full satisfaction, settlement, and release of and in exchange for such Claims, the Holders of Allowed Investor Claims will receive (i) on the later of the Effective Date and thirty (30) calendar days following the date on which such Investor Claim becomes an Allowed Investor Claim, one (1) Class A iCap Trust Interest for each dollar of Allowed Investor Class A Claims and one (1) Class B iCap Trust Interest for each dollar of Allowed Investor Class B Claims held by the applicable Investor (any resulting fractional iCap Trust Interests will be rounded to the nearest hundredth of such iCap Trust Interest), and (ii) the other consideration provided for in the

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1 Investor Claims Special Provisions set forth in Article III.C.1 of the Plan. All  
2 Distributions of Cash on account of the iCap Trust Interests will be made by the iCap  
3 Trust in accordance with the iCap Trust Interests Waterfall.

4 For clarity, the practical effect of the above is the following:

5 Class A iCap Trust Interests, which consist of Investors' principal balance  
6 owed on the Petition Date, will be paid through Distributions by the iCap Trust until  
7 fully satisfied. Once all of the Class A iCap Trust Interests are paid in full, then  
8 Distributions will be made to Class B iCap Trust Interests, which consist of Investors'  
9 accrued interest due as of the Petition Date.

10 As an example, if Investor X invested \$100,000 one year before the Petition  
11 Date with the Debtors, under the Plan, Investor X will receive (i) a \$100,000 Investor  
12 Class A Claim (i.e., the original principal investment of \$100,000); and (ii) a \$7,000  
13 Investor Class B Claim (representing 7% per annum interest on the \$100,000  
14 investment).

15 The treatment of any and all Investor Claims under the Plan is not intended to  
16 and will not reduce, impair, satisfy, limit, or otherwise affect any rights that any  
17 Investor may have against any Person that is not a Released Party (including those  
18 rights that may be included in the Contributed Claims and contributed to the iCap  
19 Trust by making the Ballot election described below).

20 Each Holder of an Investor Claim may agree by electing on its Ballot to  
21 contribute its Contributed Claims to the iCap Trust. By electing such option on its  
22 Ballot, the Investor agrees that, subject to the occurrence of the Effective Date and  
23 the formation of the iCap Trust, it will be deemed, without further action, (i) to have  
24 contributed its Contributed Claims to the iCap Trust and (ii) to have agreed to execute  
25 any documents reasonably requested to memorialize its contribution. The relative  
26 share of iCap Trust recoveries for any electing Investor will be enhanced by having  
27 the amounts that otherwise would be its Allowed Investor Class A Claim and its  
28 Allowed Investor Class B Claim each increased by the Contributing Claimants'  
Enhancement Multiplier – i.e., 10%.

d. *Class 4: General Unsecured Claims*

25 Class 4 consists of General Unsecured Claims, as more particularly described  
below. Class 4 is impaired under the Plan and entitled to vote on the Plan.

26 In full satisfaction, settlement, and release of and in exchange for such Claims,  
the Holders of Allowed General Unsecured Claims will receive on the later of the

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1 Effective Date and thirty (30) calendar days following the date on which such  
2 General Unsecured Claim becomes an Allowed General Unsecured Claim, one (1)  
3 Class A iCap Trust Interest for each dollar of Allowed General Unsecured Class A  
4 Claims and one (1) Class B iCap Trust Interest for each dollar of Allowed General  
5 Unsecured Class B Claims held by the applicable Holder (any resulting fractional  
6 iCap Trust Interests will be rounded to the nearest hundredth of such iCap Trust  
Interest). All Distributions of Cash on account of the iCap Trust Interests will be  
made by the iCap Trust in accordance with the iCap Trust Interests Waterfall.

7                   e.     *Class 5: Subordinated Claims*

8                   Class 5 consists of all Subordinated Claims. Class 5 is impaired under the Plan  
9 and deemed to reject the Plan.

10                  The Holders of Allowed Subordinated Claims will retain a residual right to  
11 receive Available Cash that remains in the iCap Trust after the final administration  
12 of all iCap Trust Assets, and the complete satisfaction of all senior payment rights  
13 within the iCap Trust Interests Waterfall, including satisfaction of all Investor Class  
14 B Claims and General Unsecured Class B Claims. The Plan Proponents have decided  
not to solicit the votes of the Holders of any Subordinated Claims, and such Holders  
are therefore deemed to have rejected the Plan.

15                  f.     *Class 6: Equity Interests*

16                  Class 6 consists of all Equity Interests and purported Equity Interests in the  
17 Debtors. Class 6 is impaired under the Plan and deemed to reject the Plan.

18                  On and after the Effective Date, (i) Holders of Equity Interests shall not be  
19 entitled to, and shall not receive or retain, any property or interest in property under  
20 the Plan on account of such Equity Interests and (ii) the Equity Interests shall be  
21 deemed to be held by the iCap Trust under applicable non-bankruptcy law and the  
22 iCap Trustees shall be authorized to exercise all of the rights and powers of a sole  
member as provided by the Plan.

23                  Any purported Equity Interests or Liens on Equity Interests held by an Investor  
24 in any Debtor will be considered void, cancelled, and of no further force and effect.  
25 These Claims will be regarded as Class 3 Investor Claims in accordance with the  
Plan, irrespective of any labels used by the Debtors and/or Investors prior to the  
Petition Date.

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1           3. Special Provisions Relating to Investor Claims.

2           The following provisions apply to Investor Claims (the “Investor Claims  
3 Special Provisions”):

4           a. The Holders of Allowed Investor Claims will receive the  
5 treatment provided for such Holders under the Plan. For the avoidance of doubt, any  
6 and all purported Equity Interests of an Investor in any Debtor shall be deemed and  
7 treated as Investor Claims of the Investor pursuant to the Plan, regardless of the  
prepetition designations used by the Debtors and/or Investors.

8           b. The iCap Trust will be created to pursue the iCap Trust Actions  
9 for the benefit of all the iCap Trust Beneficiaries; to establish and hold the  
10 Distribution Reserves; and to receive and distribute to the holders of iCap Trust  
11 Interests the net proceeds of the monetization or other disposition of the iCap Trust  
Assets in accordance with the Plan and the iCap Trust Agreement.

12           c. The iCap Trustees shall have discretion, subject to the iCap Trust  
13 Agreement, to determine whether and how to make demand upon, or sue, Investors  
14 liable for a Net Prepetition Investor Recovery, including, but not limited to, the  
15 discretion not to bring suit or make a demand because of the Investor’s financial  
16 hardship. That discretion shall be exercised in accordance with guidelines developed  
17 by the iCap Trustees in consultation with the iCap Trust Supervisory Board subject  
to the iCap Trust Agreement. No party should assume that they will be entitled to the  
exercise of such discretion.

18           d. In the event that an Investor Claim has been transferred or  
19 assigned, all Collateral Source Recoveries that were received by a prior Holder of the  
20 Claim shall be included for purposes of determining the Allowed amount of an  
Investor Claim as if such transferee or assignee had received such Distribution or  
recovery.

21           e. Upon request, Investors must, within twenty-one (21) calendar  
22 days of receipt of such request, respond to requests for information by the iCap  
23 Trustees with respect to Investor Claims. Failure to respond to a request for  
information may subject the Investor’s Claim to disallowance in the iCap Trustees’  
24 full discretion.

25           f. At the end of each quarter, beginning with the first full quarter  
26 after the iCap Trust is established, the iCap Trustees will provide a report to the  
27 Investors summarizing the recovery actions the iCap Trust has engaged in during the

1 quarter and detailing whether the iCap Trust is abandoning any specific Avoidance  
2 Actions or Causes of Action that it has determined it will not pursue, thus allowing  
3 Investors to pursue such actions, at their option.

4       4. Special Provisions Relating to Individual Investor-Specific Claims.

5 Investors retain the right to independently pursue any Individual Investor-  
6 Specific Claims. Examples of such claims include, but are not limited to: loss of lien  
7 or lien priority; claims against the Investor's own professional advisors; claims  
8 against retirement service providers; and other claims arising from an Investor's  
9 specific situation. For the avoidance of doubt, Individual Investor-Specific Claims  
10 do not encompass claims shared by all Investors or claims to recover commissions  
11 or referral fees paid by the Debtors to third parties in relation to an Investor's  
investment with the Debtors. The Plan will not interfere with an Investor's right to  
pursue these Individual Investor-Specific Claims, except as required (as determined  
by the iCap Trustees) to preserve iCap Trust Assets.

12       a. Any recovery by an Investor on an Individual Investor-Specific  
13 Claim shall reduce that Investor's entitlement to receive Distributions from the iCap  
14 Trust as follows:

15                   (i) Any recovery, net of reasonable fees and expenses actually  
16 incurred by or on behalf of the Investor, shall be first applied to reduce the  
17 applicable Investor Class A Claim, if any, and then after the Investor Class A  
Claim is reduced to \$0, shall be applied to reduce the applicable Investor Class  
B Claim.

18       b. Each Investor must promptly notify the Debtors or the iCap  
19 Trustees, as applicable, in writing, if such Investor receives any consideration on  
20 account of an Individual Investor-Specific Claim. This notification must be submitted  
21 within thirty (30) days of receiving said consideration and must detail the total  
22 amount recovered, along with any associated fees and expenses incurred. Failure to  
23 adhere to this reporting obligation may subject the Investor's Claim to disallowance  
in the iCap Trustees' full discretion, and the clawback of any Distributions previously  
received under the Plan.

24       E. **Acceptance or Rejection of the Plan**

25       1. Impaired Claims Entitled to Vote

26       The Plan Proponents shall only solicit the votes of Holders of Allowed Claims  
27 in Class 3 (Investor Claims) and Class 4 (General Unsecured Claims).

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1           2. Acceptance by an Impaired Class

2           Pursuant to Bankruptcy Code section 1126(c), except as provided in  
3 Bankruptcy Code section 1126(e), acceptance of the Plan by Holders of Claims in  
4 any Class eligible to vote on it occurs when the Plan receives approval from Holders  
5 representing at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and over one-half ( $\frac{1}{2}$ ) in number  
6 of the Allowed Claims in that Class who have duly voted to accept or reject the Plan  
within the stipulated timeframe.

7           3. Presumed Acceptance by Unimpaired Classes

8           Class 1 (Priority Claims) and Class 2 (Secured Claims) are unimpaired under  
9 the Plan. Pursuant to Bankruptcy Code section 1126(f), Holders of unimpaired  
10 Claims are presumed to have accepted the Plan and the Plan Proponents therefore  
will not solicit their votes.

11          4. Certain Impaired Classes Deemed to Reject the Plan

12          The Plan Proponents have decided not to solicit the votes of Holders of any  
13 Claims in Class 5 (Subordinated Claims) and Holders of those Claims will therefore  
14 be deemed to have rejected the Plan and will not be entitled to vote on the Plan.  
15 Holders of Class 6 Equity Interests are not entitled to receive or retain any property  
16 or interests in property under the Plan and are therefore deemed to have rejected the  
Plan pursuant to Bankruptcy Code section 1126(g). They are not entitled to vote on  
the Plan and their votes will not be solicited by the Plan Proponents.

17          5. Modification of Votes Already Cast

18          After the Voting Deadline, Creditors eligible to vote on the Plan cannot modify  
19 their cast votes or any related elections without obtaining written consent from the  
20 Plan Proponents. Such consent is subject to the reasonable discretion of the Plan  
21 Proponents.

22          6. Vacant Classes Eliminated

23          Any Class that does not contain a Holder of an Allowed Claim, or a Holder of  
24 a Claim that is temporarily allowed under Bankruptcy Rule 3018, measured as of the  
25 date on which the Confirmation Hearing begins, shall be deemed deleted from the  
26 Plan for the purpose of determining whether the Plan was accepted by that Class  
pursuant to Bankruptcy Code section 1129(a)(8).

1           **F. Implementation of the Plan**

2           As detailed below, the Plan will be implemented through, among other things,  
3 the establishment of the iCap Trust and the appointment of the iCap Trustees and the  
4 iCap Trust Supervisory Board. The iCap Trust will make Distributions in accordance  
with the Plan.

5           1. Streamlining the Debtors' Structure and Governance

6           a. *Corporate Action.* On the Effective Date, all matters under the  
7 Plan involving or requiring action of the directors, members, managers, or officers  
8 of the Debtors, including, but not limited to, actions requiring a vote or other approval  
9 of the board of directors or any of the members or officers of the Debtors or the  
10 execution of any documentation incident to or in furtherance of the Plan, shall be  
11 deemed to have been authorized by the Confirmation Order and to have occurred and  
12 be in effect from and after the Effective Date, without any further action by the  
13 Bankruptcy Court or the directors, members, managers, or officers of the Debtors.

14           b. *Debtors' Existing Directors and Officers.* On the Effective Date,  
15 each of the Debtors' existing directors and officers including, without limitation, the  
16 CRO, shall be terminated automatically without the need for any further action and  
17 without the need for any corporate or limited liability company filings, and they shall  
18 have no ongoing rights against or obligations to the Debtors or the Estates, including  
19 under any applicable prepetition agreements (all of which will be deemed  
terminated); *provided, however,* that the Debtors' indemnification and defense  
obligations under any such agreements shall survive the foregoing termination and  
remain unaltered by the Plan. On the Effective Date, the iCap Trustees shall succeed  
to all such powers as would have been applicable to the Debtors' officers and  
directors in respect of all iCap Trust Assets.

20           c. *Dissolution of the Debtors.* On and as of the earlier of the Case  
21 Closing Date and the date on which the iCap Trustees file with the Bankruptcy Court  
22 a notice of dissolution as to a Debtor, such Debtor will be dissolved automatically  
23 without the need for any further action, including the filing of any corporate or  
24 limited liability company filings; *provided, however,* that the iCap Trust may in its  
25 discretion file any certificates of cancellation as may be appropriate in connection  
26 with dissolution of any Debtor. All applicable regulatory or governmental agencies  
shall take all steps necessary to allow and effect the prompt dissolution of the Debtors  
as provided herein, without the payment of any fee, tax, or charge and without need  
for the filing of any certificates.

1                   d. *Corporate Documents and Corporate Authority.* On the Effective  
2 Date, the certificates of incorporation, bylaws, operating agreements, and articles of  
3 organization, as applicable, of all the Debtors shall be deemed amended to the extent  
4 necessary to carry out the provisions of the Plan. The entry of the Confirmation Order  
5 shall constitute authorization for the Debtors and the iCap Trustees, as applicable, to  
6 take or cause to be taken all actions (including, if applicable, corporate actions)  
7 necessary or appropriate to implement all provisions of, and to consummate, the Plan  
8 prior to, on, and after the Effective Date and all such actions taken or caused to be  
9 taken shall be deemed to have been authorized and approved by the Bankruptcy Court  
10 without further approval, act, or action under any applicable law, order, rule, or  
11 regulation.

12                  2. Cancellation of Indebtedness

13                  On the Effective Date, except for the purpose of evidencing a right to  
14 Distribution under the Plan, any Notes or other instruments or documents evidencing  
15 or creating any indebtedness or obligations of, or interest in, the Debtors, except  
16 assumed executory contracts and assumed unexpired leases, and/or such Notes or  
17 other instruments evidencing indebtedness or obligations of the Debtors that are  
18 unimpaired, reinstated, assumed, or amended and restated under the Plan, shall be  
19 cancelled and terminated and of no further force or effect.

20                  3. iCap Trust

21                  a. *Appointments.* On and after the Effective Date, the initial iCap  
22 Trustees shall become and serve as iCap Trustees. The iCap Trustees' shared  
23 compensation will be set at five percent (5%) of the iCap Trust's gross recoveries,  
24 the payment terms and timing of which will be set forth in the iCap Trust Agreement  
25 and the Plan Supplement.

26                  On and after the Effective Date, the initial iCap Trust Supervisory Board shall  
27 begin to serve without further action consistent with the terms of the Plan and iCap  
28 Trust Agreement. The purpose of the iCap Trust Supervisory Board is to oversee the  
performance of the iCap Trustees' duties and to otherwise carry out and serve the  
functions described in the Plan and in the iCap Trust Agreement. Compensation for  
the iCap Trust Supervisory Board will be set forth in the iCap Trust Agreement and  
the Plan Supplement.

29                  At the time of Confirmation of the Plan and formation of the iCap Trust, John  
30 Bender shall serve as litigation counsel to the iCap Trust and Bush Kornfeld LLP  
31 shall serve as restructuring counsel to the iCap Trust.

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1                   b. *Creation and Governance of the iCap Trust.* On the Effective  
2 Date, the iCap Trustees shall execute the iCap Trust Agreement and shall take any  
3 other steps necessary to establish the iCap Trust in accordance with the Plan. For  
4 federal income tax purposes, the transfer of the assets to the iCap Trust will be treated  
5 as a sale or other disposition of assets to the iCap Trust Beneficiaries in exchange for  
6 their Claims in the Chapter 11 Cases. Any income or loss from the transfer of assets  
to the iCap Trust shall flow through to the ultimate taxpaying member of each Debtor  
who will be responsible to pay the tax liability.

7                   For federal income tax purposes, the iCap Trust Beneficiaries shall be treated  
8 as the grantors of the iCap Trust and deemed to be the owners of the assets of the  
9 iCap Trust. The transfer of the iCap Trust Assets to the iCap Trust shall be deemed a  
10 transfer to the iCap Trust Beneficiaries by the Debtors, followed by a deemed transfer  
11 by such iCap Trust Beneficiaries to the iCap Trust. The Debtors, the iCap Trust  
12 Beneficiaries, and the iCap Trust will consistently report the valuation of the assets  
13 transferred to the iCap Trust. Such consistent valuations and revised reporting will  
14 be used for all federal income tax purposes. Income deductions, gain, or loss from  
15 the iCap Trust shall be reported to the beneficiaries of the iCap Trust in conjunction  
16 with the filing of the iCap Trust's income tax returns. Each iCap Trust Beneficiary  
shall report income, deductions, gain, or loss on such iCap Trust Beneficiary's  
income tax returns. The iCap Trust shall be governed by the iCap Trust Agreement  
and administered by the iCap Trustees and the iCap Trust Supervisory Board. The  
powers, rights, and responsibilities of the iCap Trustees shall be specified in the iCap  
Trust Agreement.

17                  c. *Vesting of iCap Trust Assets.* On the Effective Date, the iCap  
18 Trust will be automatically vested with all the Debtors' and the Estates' respective  
19 rights, title, and interest in and to all iCap Trust Assets. Except as specifically  
20 provided in the Plan or the Confirmation Order, the iCap Trust Assets shall  
21 automatically vest in the iCap Trust free and clear of all Claims, Liens, or interests  
22 subject only to the iCap Trust Interests and the iCap Trust Expenses, as provided for  
23 in the iCap Trust Agreement, and such vesting shall be exempt from any stamp, real  
estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The  
iCap Trustees shall be the exclusive trustee of the iCap Trust Assets for purposes of  
31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the  
Estates appointed pursuant to Bankruptcy Code section 1123(b)(3) regarding all iCap  
Trust Assets. The iCap Trust shall hold and distribute the iCap Trust Assets in  
accordance with the provisions of the Plan and the iCap Trust Agreement.

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1           Notwithstanding the foregoing or any other provision in the Plan, in the event  
2 that the iCap Trust receives any monies from the United States or any other  
3 Governmental Unit, obtained as forfeited assets (or otherwise) by the Governmental  
4 Unit for the benefit of the Investor victims of the Debtors' prepetition Ponzi scheme,  
5 all such monies shall not constitute Estate Assets or iCap Trust Assets, and the iCap  
6 Trustees are authorized to and shall distribute all such monies only to Investors who  
7 are Holders of Class A iCap Trust Interests or Class B iCap Trust Interests on account  
8 thereof, subject to the Plan and the iCap Trust Agreement; *provided* that the iCap  
Trustees and their agents will be reimbursed from such monies for reasonable costs  
and expenses incurred by said parties related to the iCap Trust's collection,  
administration, and Distribution of such monies to the applicable Investors.

9           d. *Sales of Estate Assets.* In accordance with Bankruptcy Code  
10 section 1146(a), no stamp tax, conveyance fee, real estate, excise, or other transfer  
11 tax, mortgage tax, mortgage recording tax, Uniform Commercial Code filing or  
12 recording filing fee or similar tax shall apply to (1) the sale or transfer of iCap Trust  
13 Assets to the iCap Trust; (2) the issuance, Distribution, transfer, or exchange of Notes  
14 or equity securities under the Plan; or (3) the establishment of any mortgage, deed of  
15 trust, Lien, pledge, or other security interest, or the execution or delivery of any lease,  
16 sublease, deed, or other transfer instrument related to or in support of the Plan. Upon  
17 entry of the Confirmation Order, the appropriate state or local governmental officials  
or agents and any third party shall forgo the collection of any such tax, recordation  
fee, or governmental assessment and accept for filing and recordation any of the  
foregoing instruments or other documents without the payment of any such tax,  
recordation fee, or assessment.

18           As part of implementation of the Plan, following Confirmation, the iCap  
19 Trustees will sell iCap Trust Assets. No further order of the court will be necessary  
20 to sell iCap Trust Assets. All sales of real property contemplated by the Plan shall be  
21 free and clear of all Liens, claims, encumbrances, and/or interests of any kind  
22 pursuant to Bankruptcy Code sections 1123(a)(5)(D) and 1141(c), with the proceeds  
23 of such sales being paid pursuant to the terms of the Plan. Pursuant to Washington  
24 Administrative Code 458-61A-207, the iCap Trust will be exempt from the  
imposition of real estate excise taxes that would otherwise be payable under Revised  
Code of Washington 82.45.060 and/or other applicable law as to any sale of the iCap  
Trust Assets at any time following Confirmation. Pursuant to Bankruptcy Code  
section 1146, the iCap Trust's making or delivery of an instrument of transfer as to  
any iCap Trust Assets following Confirmation may not be taxed under any law  
imposing a stamp tax or similar tax.

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e. *Purpose of the iCap Trust.* The iCap Trust shall be established for the purpose of pursuing or liquidating the iCap Trust Assets and making Distributions to the iCap Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d) and the terms of the Plan.

f. *Authority.* Subject to the supervision of the iCap Trust Supervisory Board as set forth in the iCap Trust Agreement, the iCap Trustees shall have the authority without the need for Bankruptcy Court approval (in each case, unless otherwise provided in the Plan) to carry out and implement all applicable provisions of the Plan, including to:

(i) review, reconcile, compromise, settle, or object to Claims and resolve such objections as set forth in the Plan;

(ii) assert and enforce all legal or equitable remedies and defenses belonging to the Debtors or their Estates, including setoff, recoupment, and any rights under Bankruptcy Code section 502(d);

(iii) calculate and make Distributions and calculate and establish reserves under and in accordance with the Plan;

(iv) retain, compensate, and employ professionals and other Persons to represent the iCap Trustees with respect to and in connection with their rights and responsibilities;

(v) establish, maintain, and administer documents and accounts of the Debtors as appropriate, which shall be segregated to the extent appropriate in accordance with the Plan;

(vi) maintain, conserve, collect, settle, and protect the iCap Trust Assets, including, but not limited to, pursuing, engaging in, and consummating any Investor Avoidance Settlements and/or Broker Settlements;

(vii) pursue, prosecute, settle, or abandon any iCap Trust Actions, including, but not limited to, Investor Avoidance Settlements and/or Broker Settlements;

(viii) act on behalf of the Debtors in all adversary proceedings and contested matters then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere;

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(ix) proceed with and employ all discovery devices permitted under applicable law, including Bankruptcy Rule 2004, in order to investigate any Claims, iCap Trust Actions, or iCap Trust Assets;

(x) sell, liquidate, transfer, assign, distribute, abandon, or otherwise dispose of the iCap Trust Assets or any part thereof or interest therein upon such terms as the iCap Trustees determine to be necessary, appropriate, or desirable;

(xi) negotiate, incur, and pay the iCap Trust Expenses;

(xii) prepare and file any and all informational returns, reports, statements, returns, and other documents or disclosures relating to the Debtors that are required under the Plan, by any Governmental Unit, or by applicable law;

(xiii) compile and maintain the official claims register, including for purposes of making initial and subsequent Distributions under the Plan;

(xiv) take such actions as are necessary or appropriate to wind-down and dissolve the Debtors;

(xv) effect all actions and execute all agreements, instruments, and other documents, and take all actions, necessary to consummate the Plan;

(xvi) comply with the Plan, exercise the iCap Trustees' rights, and perform the iCap Trustees' obligations; and

(xvii) exercise such other powers as deemed by the iCap Trustees to be necessary and proper to implement the Plan.

To the extent necessary to give full effect to their administrative rights and duties under the Plan, the iCap Trustees shall be deemed to be vested with all rights, powers, privileges, and authorities of (i) an appropriate corporate or limited liability company officer or manager of each of the Debtors under any applicable nonbankruptcy law and (ii) a “trustee” of each of the Debtors under Bankruptcy Code sections 704 and 1106. The iCap Trust Supervisory Board will have all rights and powers of a corporate board appointed under Washington law.

g. *Limitation of Liability.* The iCap Trustees and the iCap Trust Supervisory Board shall enjoy all the rights, powers, immunities, and privileges applicable to a Bankruptcy Code chapter 7 trustee with respect to limitations of

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1 liability. The iCap Trustees may, in connection with the performance of their  
2 functions, in their sole and absolute discretion, consult with their attorneys,  
3 accountants, advisors, and agents, and shall not be liable for any act taken, or omitted  
4 to be taken, or suggested to be done in accordance with advice or opinions rendered  
5 by such Persons, regardless of whether such advice or opinions were in writing.  
6 Notwithstanding such authority, the iCap Trustees shall be under no obligation to  
7 consult with any such attorneys, accountants, advisors, or agents, and their  
8 determination not to do so shall not result in the imposition of liability on the iCap  
9 Trustees unless such determination is based on willful misconduct, gross negligence,  
10 or fraud. Persons dealing with the iCap Trustees shall look only to the iCap Trust  
11 Assets to satisfy any liability incurred by the iCap Trustees to such Person in carrying  
12 out the terms of the Plan or the iCap Trust Agreement. No recourse will ever be had,  
13 directly or indirectly, against the iCap Trustees or their members, officers, directors,  
employees, professionals, representatives, agents, successors, or assigns, by legal or  
equitable proceedings or by virtue of any statute or otherwise, or any deed of trust,  
mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking,  
obligation, covenant, or agreement whatsoever executed by the iCap Trustees under  
the Plan or by reason of the creation of any indebtedness by the iCap Trustees under  
the Plan.

14                   h. *Indemnification.* The iCap Trust Agreement will include  
15 customary indemnification provisions.

16                   i. *Insurance.* The iCap Trustees shall be authorized, but not  
17 required, to obtain any insurance coverages deemed to be reasonably necessary, at  
18 the iCap Trust's sole expense, for themselves, the iCap Trustees, and their respective  
agents, including coverage with respect to the liabilities, duties, and obligations of  
19 the iCap Trustees, which insurance coverage may, at the sole discretion of the  
iCap Trustees, be extended for a reasonable period after the termination of the iCap  
20 Trust.

21                   j. *Tax Reporting.* The iCap Trust shall timely file tax returns for the  
22 iCap Trust treating the iCap Trust as a grantor trust pursuant to Treasury Regulation  
23 section 1.671- 4(a).

24                   The iCap Trust shall be responsible for timely payment of all taxes (if any)  
25 imposed on and payable by the iCap Trust, the Debtors, or any iCap Trust Assets.

26                   The iCap Trust shall distribute such tax-related notices, beneficiary statements,  
27 and informational returns, as applicable, to the applicable Holders of Allowed Claims

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1 as are required by applicable law or that the iCap Trustees determine are otherwise  
2 necessary or desirable.

3       The iCap Trust is authorized to file a request for expedited determination under  
4 Bankruptcy Code section 505(b) for any tax returns filed with respect to the Debtors.

5           k. *Distributions to iCap Trust Beneficiaries.* After payment of or  
6 reserve for all senior claims (including without limitation, Administrative Expense  
7 Claims, Priority Claims, Priority Tax Claims, and Secured Claims) in accordance  
8 with the Plan and the iCap Trust Agreement, the iCap Trust shall make Distributions  
9 to iCap Trust Beneficiaries pursuant to the iCap Trust Interests Waterfall.

10          The iCap Trust, in the iCap Trustees' sole discretion, may make periodic  
11 Distributions to the iCap Trust Beneficiaries at any time following the Effective Date,  
12 provided that such Distributions are otherwise permitted under, and not inconsistent  
13 with, the iCap Trust Interests Waterfall, the other terms of the Plan, the iCap Trust  
14 Agreement, and applicable law.

15           l. *Cash Investments.* The iCap Trustees may invest Cash of the iCap  
16 Trust, including any earnings or proceeds from such investment, and such  
17 investments will not be required to comply with Bankruptcy Code section 345(b);  
18 *provided, however,* that such investments must be investments that are permitted to  
19 be made by a "liquidating trust" within the meaning of Treasury Regulation section  
20 301.7701-4(d), as reflected therein, or under applicable guidelines, rulings, or other  
21 controlling authorities.

22           m. *Securities Act Exemption.* To the extent the iCap Trust Interests  
23 are deemed to be "securities," the issuance of those interests under the Plan is exempt  
24 from registration under the Securities Act and any applicable state and local securities  
25 laws pursuant to Bankruptcy Code section 1145.

26           n. *Contribution of Contributed Claims.* On the Effective Date, all  
27 Contributed Claims are irrevocably contributed to the iCap Trust and shall thereafter  
28 be iCap Trust Actions for all purposes. No Person may rely on the absence of a  
specific reference in the Plan, the Confirmation Order, the iCap Trust Agreement, or  
the Disclosure Statement to any Contributed Claims against such Person as any  
indication that the iCap Trust will not pursue any and all available Contributed  
Claims against such Person. The objection to the Allowance of any Claims will not  
in any way limit the ability or the right of the iCap Trust to assert, commence, or  
prosecute any Contributed Claims. Nothing contained in the Plan, the Confirmation  
Order, the iCap Trust Agreement, or the Disclosure Statement will be deemed to be

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1 a waiver, release, or relinquishment of any Contributed Claims that the Contributing  
2 Claimants had immediately prior to the Effective Date. The iCap Trust shall have,  
3 retain, reserve, and be entitled to assert all Contributed Claims fully as if the  
4 Contributed Claims had not been contributed to the iCap Trust in accordance with  
the Plan and the iCap Trust Agreement.

5       o. *Authority to Pursue and Resolve iCap Trust Actions.* The iCap  
6 Trust, as a successor in interest to the Debtors, the Estates, and the Contributing  
7 Claimants will have the exclusive right, power, and interest on behalf of itself, the  
8 Debtors, the Estates, and the Contributing Claimants to institute, commence, file,  
pursue, prosecute, enforce, abandon, settle, compromise, release, waive, dismiss, or  
withdraw any and all iCap Trust Actions without any further order of the Bankruptcy  
Court, except as otherwise provided in the iCap Trust Agreement. From and after the  
Effective Date, the iCap Trust, in accordance with Bankruptcy Code section  
1123(b)(3), shall serve as a representative of the Estates with respect to any and all  
iCap Trust Actions that were Estate Assets and shall retain and possess the right to  
institute, commence, file, pursue, prosecute, enforce, abandon, settle, compromise,  
release, waive, dismiss, or withdraw, as appropriate, any and all iCap Trust Actions  
in any court or other tribunal.

14       p. *Termination.* The iCap Trustees and the iCap Trust shall be  
15 discharged or terminated, as the case may be, at such time as: (i) the iCap Trustees  
16 determine that the pursuit of additional iCap Trust Actions is not likely to yield  
17 sufficient additional proceeds to justify further pursuit of such iCap Trust Actions  
18 and (ii) all Distributions required to be made by the iCap Trust to Holders of Allowed  
19 Claims and to the iCap Trust Beneficiaries under the Plan and the iCap Trust  
20 Agreement have been made, but in no event shall the iCap Trust be terminated later  
21 than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion  
22 made within the six-month period before such fifth anniversary (and, in the event of  
23 further extension, by order of the Bankruptcy Court, upon motion made at least six  
24 (6) months before the end of the preceding extension), determines that a fixed period  
25 extension (not to exceed three (3) years, together with any prior extensions, unless  
26 a favorable letter ruling from the IRS that any further extension would not adversely  
affect the status of the iCap Trust as a liquidating trust for federal income tax  
purposes) is necessary to facilitate or complete the recovery on, and liquidation of,  
the iCap Trust Assets. Upon termination of the iCap Trust, any remaining iCap Trust  
Assets that exceed the amounts required to be paid under the Plan may be transferred  
by the iCap Trustees to a non-profit organization of their choice.

27

28       **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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1                   q. *Interpretation.* To the extent there is any inconsistency between  
2 the Plan and the iCap Trust Agreement, the Plan shall control.

3                  4. Substantive Consolidation

4                  On the Effective Date, the Debtors, other than the Excluded Debtors with  
5 respect to Claims in Classes 2B and 2C, shall be substantively consolidated pursuant  
6 to Bankruptcy Code sections 105(a), 541, 1123, and 1129; *provided, however,* that  
7 the Debtors or iCap Trustees, as applicable, reserve the right to effectuate, without  
8 further motion practice, substantive consolidation of the Excluded Debtors after the  
9 Claims in Classes 2B and 2C are consensually resolved with the Holders of such  
10 Claims upon filing notice with the Bankruptcy Court. As a result of the substantive  
11 consolidation, on the Effective Date, all property, rights, and claims of the Debtors  
12 and all Claims against the Debtors (other than Claims in Classes 2B and 2C) shall be  
13 deemed to be pooled for purposes of Distributions under the Plan and, in the iCap  
14 Trustees' discretion, other purposes. Further, as a result of this substantive  
15 consolidation, all claims between and among the Debtors shall be cancelled. Holders  
16 of Allowed Claims shall be entitled to only one satisfaction on account of such  
17 Claims, and any contingent or otherwise duplicative Claims against one or more of  
18 the Debtors based upon claims for which one or more of the Debtors are also liable  
19 shall be disallowed. Holders of Claims in Classes 2B and 2C shall be entitled to  
20 recover up to the full amount of their Allowed Secured Claim from the sale proceeds  
21 for their Collateral.

22                  Entry of the Confirmation Order shall constitute the approval, pursuant to  
23 Bankruptcy Code sections 105(a), 541, 1123, and 1129, of the substantive  
24 consolidation of the Debtors in the manner set forth in Article V.E of the Plan;  
25 *provided, however,* that while the Debtors shall be substantively consolidated for  
26 purposes of Distributions to Creditors, such that all Investors shall have claims  
27 against a single pool of the Debtors' consolidated assets, the actual substantive  
28 consolidation of entities, particularly for tax purposes, shall be at the option of the  
Debtors or the iCap Trust, as applicable. Notwithstanding such substantive  
consolidation, however, fees payable pursuant to 28 U.S.C. § 1930 shall be due and  
payable by each individual Debtor through the Effective Date.

Substantive consolidation under the Plan shall not affect, without limitation,  
any defenses or rights the Debtors or the iCap Trust may have to any Claim, Cause  
of Action, or Avoidance Action, including the ability to assert a counterclaim.

Any Intercompany Claims that could be asserted by one Debtor against another  
Debtor will be extinguished immediately before the Effective Date with no separate

1 recovery on account of any such Claims and any Intercompany Liens that could be  
2 asserted by one Debtor regarding any Estate Assets owned by another Debtor will be  
3 deemed released and discharged on the Effective Date; *provided, however,* that solely  
4 with respect to any Secured Claim of a non-debtor as to which the associated Lien  
5 would be junior to any Intercompany Lien, the otherwise released Intercompany  
6 Claim and associated Intercompany Lien will be preserved for the benefit of, and  
may be asserted by the iCap Trust as to any Collateral so as to retain the relative  
priority and seniority of such Intercompany Claim and associated Intercompany Lien.

7 The Disclosure Statement and the Plan together form a request for the  
8 Bankruptcy Court's approval of the substantive consolidation outlined in the Plan.  
9 Unless a Creditor, purportedly impacted by this consolidation, submits a written  
objection before the Plan's confirmation objection deadline, the consolidation  
10 described in the Plan may receive approval during the Confirmation Hearing. Should  
objections be filed within the specified timeframe, the Bankruptcy Court will address  
11 such objections at the Confirmation Hearing.

12 If the Bankruptcy Court determines that substantive consolidation of any given  
13 Debtor is not appropriate, then the Debtors may request that the Bankruptcy Court  
14 otherwise confirm the Plan and approve the treatment of and Distributions to the  
different Classes under the Plan on an adjusted, Debtor-by-Debtor basis.  
15 Furthermore, the Debtors reserve their rights (i) to seek confirmation of the Plan  
without implementing substantive consolidation of any given Debtor, and, in the  
16 Debtors' reasonable discretion after consultation with the Unsecured Creditors'  
Committee, to request that the Bankruptcy Court approve the treatment of and  
17 Distributions to any given Class under the Plan on an adjusted, Debtor-by-Debtor  
basis; and (ii) after consultation with the Unsecured Creditors' Committee, to seek to  
18 substantively consolidate all Debtors into iCap Enterprises, Inc. if all impaired  
19 Classes entitled to vote on the Plan vote to accept the Plan.  
20

21       5. Preservation of Rights of Action

22       a. *Avoidance Actions and Causes of Action.* Except as otherwise  
provided in the Plan or the Confirmation Order (including in the Investor Claims  
Special Provisions), in accordance with Bankruptcy Code section 1123(b), from and  
23 after the Effective Date, the iCap Trust will retain all rights to institute, commence,  
file, pursue, prosecute, enforce, abandon, settle, compromise, release, waive, dismiss,  
24 or withdraw, as appropriate, any and all of the Debtors' or Estates' Causes of Action  
and Causes of Action that are Contributed Claims (whether existing as of the Petition  
Date or thereafter arising), and all Avoidance Actions, all as iCap Trust Actions, in  
25 each case in any court or other tribunal, including in an adversary proceeding filed in  
26  
27  
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1 the Chapter 11 Cases, subject to the requirements set forth in the Plan and the iCap  
2 Trust Agreement. The iCap Trust shall have the exclusive right, power, and interest  
3 on behalf of itself, the Debtors, the Estates, and the Contributing Claimants to,  
4 enforce, sue on, settle, compromise, transfer, or assign (or decline to do any of the  
5 foregoing) any or all of the iCap Trust Actions without notice to or approval from the  
6 Bankruptcy Court, subject to the iCap Trust Agreement. In accordance with the Plan,  
7 without any further notice to or action, order, or approval of the Bankruptcy Court,  
8 from and after the Effective Date, the iCap Trust may compromise and settle iCap  
9 Trust Actions, subject to the iCap Trust Agreement. It is anticipated that the iCap  
10 Trust will pursue iCap Trust Actions primarily under alternate fee arrangements and  
11 not a typical hourly fee structure, employing the services of professionals selected by  
(i) the Debtors, in consultation with the Unsecured Creditors' Committee, prior to  
the Effective Date or (ii) the iCap Trustees, as provided in the iCap Trust Agreement,  
on and after the Effective Date. For the avoidance of doubt, nothing in this Disclosure  
Statement or the Plan shall require the iCap Trust to commence or pursue litigation  
concerning any iCap Trust Action.

12           b. *Preservation of All iCap Trust Actions Not Expressly Settled or*  
13 *Released.* The failure to specifically identify in the Disclosure Statement (including  
14 its exhibits and schedules) or the Plan any potential or existing Avoidance Actions  
15 or Causes of Action as an iCap Trust Action is not intended to and shall not limit the  
16 rights of the iCap Trust to pursue any such Avoidance Actions or Causes of Action.  
17 Unless an iCap Trust Action is expressly waived, relinquished, released,  
18 compromised, or settled in the Plan or any Final Order (including the Confirmation  
19 Order), the Debtors expressly reserve such iCap Trust Action for later resolution by  
20 the iCap Trust (including any Avoidance Actions or Causes of Action not specifically  
21 identified or of which the Debtors may presently be unaware or that may arise or  
22 exist by reason of additional facts or circumstances unknown to the Debtors at this  
23 time or facts or circumstances that may change or be different from those the Debtors  
24 now believe to exist). In addition, the right to pursue or adopt any claims alleged in  
25 any lawsuit in which any Debtor or the iCap Trust is a plaintiff, defendant, or an  
interested party is fully reserved as against any Person that is not a Released Party,  
including the plaintiffs or co-defendants in such lawsuits. No preclusion doctrine,  
including the doctrines of res judicata, collateral estoppel, issue preclusion, claim  
preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any  
iCap Trust Actions upon, after, or as a consequence of the confirmation of the Plan.

26           c. *Categories of Preserved Claims.* The Plan specifically preserves  
27 the right for the iCap Trust and iCap Trustees to pursue any and all claims that the  
Debtors and/or their Estates have the right to pursue, including all Causes of Action

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1 and Avoidance Actions, as defined in the Plan. Without in any way limiting the iCap  
2 Trust's and the iCap Trustees' rights to pursue claims against third parties, the  
3 following are illustrative categories of claims that the iCap Trust will have the right  
4 to pursue:

- 5 1. Insider and non-Insider preference actions arising under bankruptcy  
and/or state law;
- 6 2. Fraudulent transfer actions arising under bankruptcy and/or state  
law;
- 7 3. Turnover actions under bankruptcy law;
- 8 4. Any and all other rights and/or claims arising under the bankruptcy  
laws;
- 9 5. Claims against third parties that aided and abetted the Debtors'  
conduct;
- 10 6. Intentional and unintentional tort claims against third parties,  
including professional firms and former iCap principals and  
employees;
- 11 7. Claims against third parties that may arise out of or relate to the  
conduct of an alleged Ponzi scheme;
- 12 8. Breach of contract claims;
- 13 9. Employment claims against former iCap employees, including  
breach of duties and breach of non-compete agreements and/or  
other agreements;
- 14 10. Claims against third parties for return of commissions paid;
- 15 11. Claims against former principals, directors, and officers for breach  
of fiduciary duties, breach of duty of loyalty, and similar claims;  
and
- 16 12. All other claims not included in these categories that are Causes of  
Action and Avoidance Actions, as defined in the Plan.

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1           6.     Exit Financing

2           On the Effective Date, without the need for further action, the iCap Trust shall  
3 enter into the Exit Financing, including the First Lien Exit Loan Facility and the  
4 Tritalent Exit Loan Facility.

5           7.     Abandonment of Certain Estate Assets

6           Unless previously sold or disposed of, on the Effective Date, and without the  
7 need for further action, the following Estate Assets shall be deemed abandoned by  
8 the Debtors and their Estates pursuant to Bankruptcy Code section 554 and shall not  
be considered iCap Trust Assets:

- 9           – the real property commonly known as 715–775 Broadway, Tacoma, WA;  
10           and  
11           – the Debtors' interests in Holding and Markets (which entities shall be  
12 dissolved by the Debtors under the Confirmation Order) including, without  
limitation, the Airlink Membership Interests.

13           **G. Executory Contracts and Unexpired Leases**

14           The Debtors have no executory contracts or unexpired leases within the  
15 meaning of Bankruptcy Code section 365.

16           **H. Conditions Precedent to the Effective Date**

17           1.     Occurrence of Effective Date

18           The Effective Date shall not occur and the Plan shall not be considered  
19 consummated until each of the following conditions has either been satisfied or  
waived as set forth in Article IX.B of the Plan:

- 20           a. Entry of the Confirmation Order by the Bankruptcy Court in a form  
21 reasonably acceptable to both the Debtors and the Unsecured  
22 Creditors' Committee, and no request for revocation of the  
23 Confirmation Order under Bankruptcy Code section 1144 shall have  
been made, or, if made, shall remain pending;
- 24           b. The Confirmation Order shall have become a Final Order in full  
25 force and effect and shall not be subject to any stay of effectiveness;
- 26           c. The iCap Trustees shall be duly appointed, qualified, and acting in  
27 that capacity;

- d. The iCap Trust shall have access to funding under the Exit Financing;
  - e. There shall not be in effect any (i) order, opinion, ruling, or other decision entered by any court or other Governmental Unit or (ii) U.S. or other applicable law staying, restraining, enjoining, prohibiting, or otherwise making illegal the implementation of any of the transactions contemplated by the Plan; and
  - f. All necessary actions, agreements, instruments, or other documents to implement the terms and provisions of the Plan have been completed or executed and delivered, as required.

## 2. Waiver of Conditions

The conditions set forth in Article IX.A of the Plan may be waived, in whole or in part, in writing by agreement of the Debtors, at any time, without notice or further order of the Bankruptcy Court.

### 3. Non-Occurrence of Effective Date Conditions

If the conditions necessary for the Effective Date are not met or duly waived as outlined in Articles IX.A and B of the Plan, upon notification filed by the Debtors with the Bankruptcy Court, the following shall occur: (i) the Confirmation Order will be vacated; (ii) no Distributions will be made; (iii) the Debtors, the Estates, the Unsecured Creditors' Committee, and all Creditors will revert to the status quo as of the day immediately preceding the Confirmation Hearing as if the Confirmation Order had not been entered; and (iv) all obligations of the Debtors and the Estates regarding Claims will remain unchanged. Nothing in the Plan will constitute a waiver or release of any Claims by or against the Debtors, the Estates, or any other Person, nor will it prejudice the rights, claims, or defenses of the Debtors, the Estates, or any other Person.

#### 4. Effective Date Notice

Following the Effective Date, the iCap Trust or its representatives will promptly send notices to all Creditors and the U.S. Trustee. These notices will include information regarding: (i) the Confirmation Order and the Plan's Confirmation; (ii) the Effective Date; (iii) the assumption, assignment, and rejection of executory contracts and unexpired leases pursuant to the Plan, if any, along with the deadline for filing any Claims resulting from such rejection; (iv) the deadline set forth in the Plan for filing Administrative Expense Claims; (v) the deadline by which

1 Professional Persons must file and serve any requests for payment of professional  
2 fees; and (vi) any other pertinent matters deemed appropriate by the iCap Trustees.

3 **I. Certain Miscellaneous Provisions**

4       1. Payment of Statutory Fees

5       All fees payable pursuant to 28 U.S.C. § 1930, as determined by the  
6 Bankruptcy Court at the Confirmation Hearing, shall be paid by the Debtors on or  
7 before the Effective Date. All such fees that relate to Distributions by each Debtor  
8 after the Effective Date shall be paid by the iCap Trustees. Notwithstanding anything  
9 to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of  
claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

10      2. Mailing List

11     The official listing of Creditor identities and mailing addresses is maintained  
12 by the Claims Agent (the “Official Mailing List”). It shall be the obligation of each  
13 Creditor and/or party in interest to assure that the Official Mailing List is current and  
accurate as to each such person or entity.

14      3. Employment of Professional Persons

15     The Debtors shall be authorized to employ and compensate Professional  
16 Persons following Confirmation upon such terms as the Debtors deem reasonable  
17 and appropriate without further notice or order of the Bankruptcy Court.

18      4. Payments Shall Be Timely

19     The Debtors shall timely make all payments required under the Plan. Without  
20 limiting the generality of the foregoing, the iCap Trust shall be responsible for the  
timely payment of quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6)  
21 following Confirmation until the Case Closing Date. After Confirmation, the iCap  
Trust shall serve on the U.S. Trustee quarterly a financial report for each quarter (or  
portion thereof) the Chapter 11 Cases remain open. The financial report shall include  
22 a statement of all disbursements made during the course of the relevant quarter,  
whether or not pursuant to the Plan.

23      5. Treatment of Negotiable Instruments

24     Any negotiable instrument held by the Holder of a Claim shall be deemed  
exchanged, canceled, or satisfied, as the case may be, on the Effective Date.

1           6.     Stay of Confirmation Order Shall Not Apply

2           The stay of enforceability of the Confirmation Order pursuant to Bankruptcy  
3         Rule 3020(e) shall not apply, and the Confirmation Order shall be enforceable  
4         according to its terms absent further order of the Bankruptcy Court.

5           7.     Preservation of Privileges and Defenses

6           The actions taken by the Debtors, the iCap Trust, or any of their respective  
7         Related Parties in connection with the Plan shall not be a waiver of any privilege or  
8         defense of the Debtors or the iCap Trust. Notwithstanding any Debtors providing any  
9         privileged information related to any iCap Trust Actions to the iCap Trustees, the  
10        iCap Trust, or any Person associated with any of the foregoing, such privileged  
11        information shall be without waiver in recognition of the joint, common, or successor  
12        interest in prosecuting the iCap Trust Actions and shall remain privileged. The iCap  
13        Trust shall retain the right to waive its own privileges. Only the iCap Trustees shall  
14        have the right to waive the attorney-client privilege, work-product doctrine, or other  
15        protections as to the Debtors and the iCap Trust.

16           8.     Releases and Related Matters

17           On the Effective Date, for good and valuable consideration, the adequacy of  
18         which is hereby confirmed, each of the Releasing Parties shall be deemed, to the  
19         fullest extent permitted under applicable law, to have forever released, waived, and  
20         discharged each of the Released Parties from any and all claims, obligations, suits,  
21         judgments, damages, demands, debts, rights, Causes of Action, and liabilities  
22         whatsoever, whether known or unknown, whether foreseen or unforeseen, whether  
23         liquidated or unliquidated, whether fixed or contingent, whether matured or  
24         unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based  
25         in whole or in part on any act, omission, transaction, event, or other occurrence taking  
26         place on or prior to the Effective Date in any way relating to the Debtors, the Estates,  
27         the conduct of the Debtors' businesses, the Chapter 11 Cases, or the Plan, except for  
28         acts or omissions that are determined by Final Order to have constituted actual fraud  
          or willful misconduct; *provided, however,* that nothing in Article X.G of the Plan  
          shall release or otherwise affect any Person's rights under the Plan or the  
          Confirmation Order.

29           Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's  
30         approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Article X.G  
31         of the Plan; and (ii) the Bankruptcy Court's findings that such releases are (a) in  
32         exchange for good and valuable consideration provided by the Released Parties

(including performance of the terms of the Plan), and a good-faith settlement and compromise of the released claims, (b) in the best interests of the Debtors, the Estates, and any Holders of Claims that are Releasing Parties, (c) fair, equitable, and reasonable, (d) given and made after due notice and opportunity for hearing, and (e) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

## 9. Exculpation

On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person, including to any Holder of a Claim or an Equity Interest, for any prepetition or postpetition act or omission in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, Confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with the Plan, or the administration of the Plan or the property to be distributed under the Plan, or any other postpetition act taken or omission originating or occurring in connection with or in contemplation of the restructuring, sale, or liquidation of the Debtors; *provided, however,* that nothing in Article X.H of the Plan shall release or otherwise affect any Person's rights under the Plan or the Confirmation Order; and *provided, further,* that the exculpation provisions of Article X.H of the Plan shall not apply to acts or omissions constituting actual fraud, willful misconduct, or gross negligence by such Exculpated Party as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting the Exculpated Parties from liability. The Confirmation Order shall serve as a permanent injunction against any Person seeking to enforce any Causes of Action against the Exculpated Parties that are encompassed by the exculpation provided by Article X.H of the Plan.

## 10. Injunction

Except as otherwise expressly provided in the Plan, and except in connection with the enforcement of the Plan or any documents provided for or contemplated in the Plan, all Persons who have held, hold, or may hold Claims against or Equity Interests in the Debtors or the Estates that (i) have been released pursuant to Article X.G of the Plan or (ii) are subject to exculpation pursuant to Article X.H of the Plan, are permanently enjoined from and after the Effective Date from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of

any kind against the Debtors, the Estates, or their successors and assignees, or any of their assets and property, with respect to any such Claim or Equity Interest; (b) the enforcement, attachment, collection, or recovery by any manner or means, directly or indirectly, of any judgment, award, decree, or order against the Debtors, the Estates, or their successors and assignees, or any of their assets and property, with respect to any such Claim or Equity Interest; (c) creating, perfecting, or enforcing, directly or indirectly, any Lien or encumbrance of any kind against the Debtors, the Estates, or their successors and assignees, or any of their assets and property, with respect to any such Claim or Equity Interest; (d) asserting, directly or indirectly, any setoff, or recoupment of any kind against any obligation due to the Debtors, the Estates, or their successors and assignees, or any of their assets and property, with respect to any such Claim or Equity Interest, unless approved by the Bankruptcy Court; and (e) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan with respect to such Claim or Equity Interest. Without limiting the foregoing, the automatic stay provided under Bankruptcy Code section 362(a) shall remain in effect until the Chapter 11 Cases are closed. Nothing contained in Article X.I of the Plan shall prohibit the Holder of a filed proof of Claim from litigating its right to seek to have such Claim declared an Allowed Claim and paid in accordance with the distribution provisions of the Plan, or enjoin or prohibit the interpretation or enforcement by the Holder of such Claim or Equity Interest of any of the obligations of the Debtors or the iCap Trustees under the Plan. The iCap Trust shall be entitled, as liquidated damages, to the payment of any fees and costs incurred by the iCap Trust to address any violation of the injunction contained in Article X.I of the Plan.

#### 11. Injunction Against Interference with the Plan

Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect affiliates shall be enjoined from taking any actions of any kind against the iCap Trustees, the iCap Trust, or any of the iCap Trust Assets that interfere with the implementation or consummation of the Plan. The iCap Trust shall be entitled, as liquidated damages, to the payment of any fees and costs incurred by the iCap Trust to address any violation of the injunction contained in Article X.J of the Plan.

#### 12. SEC Rights

Notwithstanding any language to the contrary in this Disclosure Statement, the Plan, and/or the Confirmation Order, no provision shall (a) preclude the SEC from enforcing its police or regulatory powers; or, (b) enjoin, limit, impair, or delay the

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1 SEC from commencing or continuing any claims, Causes of Action, proceeding, or  
2 investigations against any non-Debtor Person or non-Debtor entity in any forum.

3       13. Insurance Policies

4       Nothing in the Plan or the Confirmation Order shall in any way operate to, or  
5 have the effect of, impairing, altering, supplementing, changing, expanding,  
6 decreasing, or modifying the rights and obligations of the Debtors (and their Estates),  
7 third party beneficiaries or named insureds, and the Debtors' insurers (and third-party  
8 claims administrators) under any of the Debtors' insurance policies (including any  
9 D&O Insurance) or modify the coverage or benefits provided thereunder or the terms  
10 and conditions thereof or diminishes or impairs the enforceability of the insurance  
11 policies. For all issues relating to insurance coverage, the provisions, terms,  
12 conditions, and limitations of the Debtors' insurance policies shall control. For the  
13 avoidance of doubt, nothing herein (a) constitutes a rejection of any insurance policy  
14 (including the D&O Insurance) or (b) relieves any party from any injunction or stay  
15 created or preserved under the Plan.

16       14. Books and Records

17       On the Effective Date, the Debtors' books and records shall be transferred to  
18 the iCap Trustees. The iCap Trustees shall be free, in their discretion to abandon,  
19 destroy, or otherwise dispose of the books and records in compliance with applicable  
20 non-bankruptcy law, or any other order of the Bankruptcy Court, at any time on and  
21 after the Effective Date, without the need for any other or further order; *provided,*  
22 *however,* that neither the Debtors nor the iCap Trustees shall destroy or otherwise  
23 abandon any books, records, electronically stored information, or other documents  
24 without providing advance notice to the SEC (c/o William M. Uptegrove, U.S.  
25 Securities and Exchange Commission, 950 East Paces Ferry Road, NE, Suite 900,  
26 Atlanta, GA 30326, UptegroveW@SEC.GOV), which shall have seven (7) days to  
object to any proposed destruction or abandonment, and with authorization from the  
Bankruptcy Court; *provided further* that, nothing in the Plan or the Confirmation  
Order shall affect the obligations of the Debtors, the iCap Trust, and/or any transferee  
or custodian to maintain any books and records that are subject to any governmental  
subpoena, document preservation letter, or other investigative request from a  
governmental agency. In the event that the iCap Trust becomes the subject of a  
directive or requirement to retain any books and records, the iCap Trust may provide  
notice to the parties who requested or obtained such directive or requirement (the  
"Document Destruction Notice Parties") of an intent to destroy such documents. In  
the event a Document Destruction Notice Party objects to the destruction, it shall  
provide the iCap Trust with a written agreement and assurance, each of which is

27  
28       **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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1 reasonably acceptable to the iCap Trust, providing for the reimbursement and  
2 payment of all costs and expenses associated with the continued maintenance of such  
3 documents and records by the iCap Trust. Such costs and expenses shall include, but  
4 may not be limited to, third party fees and expenses, storage device costs, copying  
5 fees, the fees and expenses of counsel or other professionals to address any subpoenas  
6 or document production demands, and, if such extended maintenance precludes entry  
7 of the final decree, any fees (including U.S. Trustee fees) associated with such delay.

8           15. Severability

9           In the event the Bankruptcy Court determines, before Confirmation, that any  
10 provision in the Plan is invalid, void, or unenforceable, the Bankruptcy Court shall  
11 have the power to alter and interpret such term or provision to make it valid or  
12 enforceable to the maximum extent practicable, consistent with the original purpose  
13 of the term or provision held to be invalid, void, or unenforceable, and such term or  
14 provision shall then be applicable as altered or interpreted. Notwithstanding any such  
15 holding, alteration, or interpretation, the remainder of the terms and provisions of the  
16 Plan will remain in full force and effect and will in no way be affected, impaired, or  
17 invalidated by such holding, alteration, or interpretation. The Confirmation Order  
18 shall constitute a judicial determination and shall provide that each term and  
19 provision of the Plan, as it may have been altered or interpreted in accordance with  
20 the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the  
21 Plan and may not be deleted or modified without consent of the Debtors; and  
22 (c) nonseverable and mutually dependent.

23           16. Revocation or Withdrawal of the Plan

24           The Debtors reserve the right to revoke or withdraw the Plan before  
25 Confirmation and to file a subsequent plan. If the Debtors revoke or withdraw the  
26 Plan before Confirmation, then the Plan shall be deemed null and void. In such event,  
nothing contained herein shall constitute or be deemed a waiver or release of any  
claims by or against the Debtors or to prejudice in any manner the rights of the  
Debtors in any further proceedings involving the Debtors.

27           17. Notices

28           All notices, requests, and demands to or upon the iCap Trustees or the Debtors,  
as applicable, to be effective shall be in writing and, unless otherwise expressly  
provided herein, shall be deemed to have been duly given or made when actually  
delivered and addressed as follows:

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1 If to the Debtors, to:

2 iCap Enterprises, Inc. *et al.*  
3 c/o Pivot Management Group, LLC  
4 1230 Rosecrans Ave., Suite 530  
Manhattan Beach, CA 90266  
5 Attn: Lance Miller (Lance.miller@pivotgrp.com)

6 With copies to:

7 O'Melveny & Myers LLP  
8 400 South Hope Street, Suite 1900  
9 Los Angeles, CA 90071  
Attn: Julian Gurule (jgurule@omm.com)

10 and

11 O'Melveny & Myers LLP  
12 1301 Avenue of the Americas, Suite 1700  
13 New York, NY 10019  
14 Attn: Diana Perez (dperez@omm.com)

15 If to the Unsecured Creditors' Committee, to:

16 Bush Kornfeld LLP  
17 601 Union Street, Suite 5000  
Seattle, WA 98101  
18 Attn: Armand J. Kornfeld (jkornfeld@bskd.com)  
Aimee S. Willig (awillig@bskd.com)  
Jason Wax (jwax@bskd.com)

19 and

20 Corr Cronin LLP  
21 1015 Second Ave., Floor 10  
22 Seattle, WA 98104  
23 Attn: John T. Bender (jbender@corrchronin.com)

24 If to the iCap Trustees, to:

25 Pivot Management Group, LLC  
1230 Rosecrans Ave., Suite 530

26 **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**  
27 **FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

1           Manhattan Beach, CA 90266  
2           Attn: Lance Miller (Lance.miller@pivotgrp.com)

3           and

4           B. Riley Advisory Services  
5           19800 MacArthur Boulevard, Suite 820  
6           Irvine, CA 92612  
7           Attn: Seth Freeman (sfreeman@brileyfin.com)

8           18. Exhibits/Schedules

9           All exhibits and schedules to the Plan, including the Plan Supplement, are  
10          incorporated into and are a part of the Plan as if set forth in full therein. After the  
11          exhibits and documents are filed, copies of such exhibits and documents shall be  
12          available free of charge on the Debtors' case website at:  
13          <https://cases.creditorinfo.com/iCap/documents/docket>. To the extent any exhibit or  
14          document is inconsistent with the terms of the Plan, unless otherwise ordered by the  
15          Bankruptcy Court, the Plan shall control.

16           19. Successors and Assigns

17           The rights, benefits, and obligations of any Person named or referred to in the  
18          Plan shall be binding on, and shall inure to the benefit of any heir, executor,  
19          administrator, successor or assign, affiliate, officer, director, agent, representative,  
20          attorney, beneficiaries, or guardian, if any, of each such Person.

21           20. Reservation of Rights

22           Except as expressly set forth herein, the Plan shall have no force or effect  
23          unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing  
24          of the Plan, any statement or provision contained herein, or the taking of any action  
25          by any Debtor with respect to the Plan shall be or shall be deemed to be an admission  
26          or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity  
27          Interest before the Effective Date.

28           21. Dissolution of the Unsecured Creditors' Committee

29           Upon the occurrence of the Effective Date, the Unsecured Creditors'  
30          Committee shall dissolve automatically, whereupon its members, professionals, and  
31          agents shall be released from any duties and responsibilities in the Chapter 11 Cases  
32          and under the Bankruptcy Code (except with respect to (a) obligations arising under

33           **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
34           FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

1 confidentiality agreements, which shall remain in full force and effect,  
2 (b) applications for allowance and payment of the fees of Professional Persons, and  
3 (c) any pending motions or other actions seeking enforcement or implementation of  
the provisions of the Plan).

4           **22. Votes Solicited in Good Faith**

5           Upon entry of the Confirmation Order, the Debtors will be deemed to have  
6 solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code,  
7 and pursuant to Bankruptcy Code section 1125(e), the CRO, the Debtors, the  
8 Unsecured Creditors' Committee, and their respective affiliates, agents,  
representatives, members, principals, shareholders, officers, directors, employees,  
advisors, and attorneys shall have no liability for the violation of any applicable law,  
rule, or regulation governing the solicitation of votes the Plan.

10           **ARTICLE VI.**  
**RISK FACTORS**

11           Prior to voting on the Plan, each Holder of a Claim entitled to vote should  
12 consider carefully the risk factors described below, as well as all other information  
13 contained in this Disclosure Statement, including the exhibits hereto. These risk  
14 factors should not be regarded as the only risks involved in connection with the Plan  
15 and its implementation.

16           **A. Parties May Object to the Plan's Classification of Claims and Equity  
17           Interests**

18           Bankruptcy Code section 1122 provides that a plan may place a claim or an  
19 interest in a particular class only if such claim or interest is substantially similar to  
20 the other claims or interests in such class. The Plan Proponents believe that the  
classification of the Claims and Equity Interests under the Plan complies with this  
21 requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will  
reach the same conclusion.

22           **B. The Plan Proponents May Not Be Able to Obtain Confirmation of the  
23           Plan**

24           With regard to any proposed plan, the Plan Proponents may not receive the  
25 requisite acceptances to confirm the plan. In the event that votes with respect to  
26 Claims in the Classes entitled to vote are received in number and amount sufficient  
27 to enable the Bankruptcy Court to confirm the Plan, the Plan Proponents intend to  
seek Confirmation of the Plan by the Bankruptcy Court. If the requisite acceptances

1       are not received, the Plan Proponents may not be able to obtain Confirmation of the  
2       Plan. Even if the requisite acceptances of the Plan are received, the Bankruptcy Court  
3       still might not confirm the Plan as proposed if the Bankruptcy Court finds that any  
4       of the statutory requirements discussed below for Confirmation of the Plan under  
Bankruptcy Code section 1129 have not been met.

5       If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance  
6       that any alternative plan would be on terms as favorable to Holders of Claims as the  
7       terms of the Plan. In addition, there can be no assurance that the Plan Proponents will  
8       be able to successfully develop, prosecute, confirm, and consummate an alternative  
plan that is acceptable to the Bankruptcy Court and the Debtors' Creditors.

9       **C. The Conditions Precedent to the Effective Date of the Plan May Not  
10      Occur**

11       As more fully set forth in the Plan, the Effective Date is subject to several  
12      conditions precedent. There can be no assurance that any or all of such conditions  
13      will be satisfied (or waived). If such conditions precedent are not met or waived, the  
Effective Date will not occur. Accordingly, even if the Plan is confirmed by the  
Bankruptcy Court, there can be no assurance that the Effective Date will occur.

14       **D. Claims Estimation and Allowance of Claims**

15       There can be no assurance that the estimated Claim amounts set forth in this  
16      Disclosure Statement are correct, and the actual amount of Allowed Claims may  
17      differ significantly from the estimates. The estimated amounts are subject to certain  
18      risks, uncertainties, and assumptions. Should one or more of these risks or  
uncertainties materialize, or should underlying assumptions prove incorrect, the  
actual amount of Allowed Claims may vary from those estimated herein.

19       Distributions to Holders of Allowed Investor Claims and Allowed General  
20      Unsecured Claims will be affected by the pool of Allowed Claims in each respective  
21      Class. Upon completion of further analysis of filed Claims, which will likely lead to  
Claims objection litigation and related matters, the total amount of Claims that  
ultimately become Allowed Claims in each of the foregoing Classes may differ from  
the Plan Proponents' estimates, which are reflected in this Disclosure Statement, and  
such difference could be material. As a result, the amount of Distributions that may  
be received by a particular Holder of an Allowed Claim may be either adversely or  
favorably affected by the aggregate amount of Investor Claims or General Unsecured  
Claims ultimately Allowed.

1           **E. Potential Pursuit of iCap Trust Actions Against Creditors and Others**

2           In accordance with Bankruptcy Code section 1123(b), after the Effective Date,  
3 the iCap Trustees shall have and retain and may enforce any iCap Trust Actions.  
4 Accordingly, a Holder of a Claim may be subject to one or more such iCap Trust  
Actions being asserted against it.

5           The failure to specifically identify in the Disclosure Statement or the Plan any  
6 potential or existing Avoidance Actions or Causes of Action as an iCap Trust Action  
7 is not intended to and shall not limit the rights of the iCap Trust to pursue any such  
8 Avoidance Actions or Causes of Action. The Debtors expressly reserve all  
9 Avoidance Actions and Causes of Action, other than those Avoidance Actions and  
10 Causes of Action that are expressly waived, relinquished, released, compromised, or  
11 settled in the Plan, pursuant to the Confirmation Order, or pursuant to any other order  
12 of the Bankruptcy Court, as iCap Trust Actions for later adjudication, and no  
13 preclusion doctrine (including the doctrines of res judicata, collateral estoppel,  
judicial estoppel, equitable estoppel, issue preclusion, claim preclusion, and laches)  
shall apply to such Avoidance Actions or Causes of Action as iCap Trust Actions on  
or after the Effective Date.

14           Moreover, no Person may rely on the absence of a specific reference in the  
15 Plan, the Confirmation Order, the iCap Trust Agreement, or the Disclosure Statement  
16 to any Contributed Claims against such Person as any indication that the iCap Trust  
17 will not pursue any and all available Contributed Claims against such Person. The  
objection to the Allowance of any Claims will not in any way limit the ability or the  
right of the iCap Trust to assert, commence, or prosecute any Contributed Claims.  
Nothing contained in the Plan, the Confirmation Order, the iCap Trust Agreement,  
or the Disclosure Statement will be deemed to be a waiver, release, or relinquishment  
of any Contributed Claims that the Contributing Claimants had immediately prior to  
the Effective Date. The iCap Trust shall have, retain, reserve, and be entitled to assert  
all Contributed Claims fully as if the Contributed Claims had not been contributed to  
the iCap Trust in accordance with the Plan and the iCap Trust Agreement.

22           Without limiting the generality of the preceding two paragraphs and associated  
23 reservations, the Plan Proponents note that all parties in interest should review the  
24 categories of claims that the iCap Trust will have the right to pursue set forth in  
Article V.F.3 of the Plan.

1           **F.     Delay in Liquidating iCap Trust Actions**

2           Distributions to Holders of Allowed Claims under the Plan are partly  
3 dependent on the iCap Trustees' ability to litigate to judgment and/or settle the iCap  
4 Trust Actions. The Debtors cannot predict the ultimate outcome regarding the  
5 liquidation and/or settlement of the iCap Trust Actions. Even if the iCap Trust  
6 Actions are ultimately liquidated and/or settled, the Debtors cannot predict the time  
7 necessary to accomplish that result. Any delay in liquidating and/or the iCap  
8 Trustees' inability to liquidate the iCap Trust Actions may negatively impact  
9 Distributions to Holders of Allowed Claims under the Plan.

10           **G.     Risks Regarding Real Estate**

11           The Plan relies, in part, on generating proceeds from real estate sales to  
12 produce Cash for remittance to the iCap Trust for Distribution to Creditors. In the  
13 event that sales are delayed, costs incurred with respect to real property prior to sale  
14 exceed estimates, or markets decline due to economic conditions or other constraints,  
15 payments may be correspondingly delayed.

16           The ability to monetize the Estate Assets is subject to certain risks associated  
17 with the real estate industry in general, including: local, national, and international  
18 economic conditions; the supply and demand for properties; the financial conditions  
19 for tenants, buyers, and sellers of properties; changes in interest rates; changes in  
20 environmental laws or regulations, planning laws and other governmental roles and  
21 fiscal and monetary policies; changes in real property tax rates and related tax  
22 deductions; negative developments in the economy that depress travel and retail  
23 activity; uninsured casualties; force majeure acts, terrorist events, under-insured or  
24 uninsurable losses; and other factors that are beyond the reasonable control of the  
25 iCap Trust. In addition, real estate assets are subject to long-term cyclical trends that  
26 can give rise to significant volatility in values. Real estate investing and development  
27 may be subject to a higher degree of market risk because of concentration in a specific  
28 industry, sector, or geographic sector; here, most of the Estate Assets are located in  
the greater Seattle area. Real estate investments may be subject to other general and  
specific risks, including declines in the value of real estate generally, risks related to  
general and economic conditions, changes in the value of the comparable properties,  
and defaults by real estate borrowers within the particular market or the broader  
economy.

1           **H. Securities Law Considerations**

2           There are several material securities law considerations, risks, and  
3           uncertainties associated with consummation of the Plan. Holders of Claims, Holders  
4           of Equity Interests, and other interested parties should read carefully the discussion  
5           set forth in Article VIII.

6           Holders of Claims or Equity Interests should consult their own advisors  
7           regarding any securities law consequences of the treatment of their Claims or Equity  
8           Interests under the Plan.

9           Under the terms of the iCap Trust Agreement, the iCap Trust Interests initially  
10          will be uncertificated and subject to the Transfer Restrictions (as defined below) as  
11          set forth in the iCap Trust Agreement. Under the Transfer Restrictions, the iCap Trust  
12          Interests cannot be assigned or transferred by any holder thereof other than by will  
13          or intestate succession upon the death of such holder or otherwise by operation of  
14          law. Accordingly, unless and until the Transfer Restrictions lapse or are terminated,  
15          Holders of Allowed Investor Claims will be subject to substantial restrictions on their  
16          ability to sell or otherwise dispose of their iCap Trust Interests and should be prepared  
17          to retain their iCap Trust Interests.

18          The Transfer Restrictions applicable to Class A iCap Trust Interests are not  
19          expected to lapse or be terminated until such time as such Class A iCap Trust Interests  
20          are effectively registered under the Exchange Act (as defined below). Although the  
21          iCap Trust is required to use its commercially reasonable best efforts to register, and  
22          under the Exchange Act may become required to register, the Class A iCap Trust  
23          Interests, no assurance can be given that the iCap Trust will be able to satisfy all  
24          applicable requirements for such Exchange Act registration. The Transfer  
25          Restrictions applicable to the Class B iCap Trust Interests are not expected to lapse  
26          or be terminated.

27          The iCap Trust may, by reason of the amount of its total assets and the number  
28          of the holders of record of its iCap Trust Interests as of the last day of its first fiscal  
29          year, become subject to the registration requirements of the Exchange Act. It is likely  
30          that the iCap Trust will need to seek relief from or modification of certain technical  
31          requirements of the Exchange Act (such as the filing of pre-Effective Date financial  
32          information of the Debtors), which the iCap Trust intends to do in connection with  
33          such registration. While the Debtors have been advised that such relief and  
34          modifications have been granted by the SEC in the past with respect to other  
35          liquidation trusts formed in connection with chapter 11 bankruptcies, such relief and  
36          modification have not yet been obtained with respect to the iCap Trust and no  
37          relief or modification has been requested.

assurance can be given that such relief or modification will become available. If the iCap Trust becomes required to register and fails to do so in accordance with the requirements of the Exchange Act, it may become subject to civil fines, injunctive relief, or other disciplinary action on the part of the SEC.

In the event that the iCap Trust successfully registers the Class A iCap Trust Interests or other class of equity securities under Section 12(g) of the Exchange Act, the iCap Trust is expected to become a reporting issuer under such act. Accordingly, at such time the iCap Trust will be required to prepare and timely file, as and when required, quarterly reports on Form 10-Q, annual reports on Form 10-K, and current report on Form 8-K. Additionally, at such time the iCap Trust is expected to become subject to all other requirements applicable to an issuer with a class of equity securities registered under Section 12(g). Although such registration of the Class A iCap Trust Interests and the following termination or modification of the Transfer Restrictions may increase the liquidity of such iCap Trust Interests, such registration and the iCap Trust's compliance with such regulations will impose substantial costs on the iCap Trust, and thereby may reduce Distributions made in respect of Beneficial Interests (as defined below) to the holders thereof.

## I. Tax Considerations

There are several material income tax considerations, risks, and uncertainties associated with consummation of the Plan. Holders of Claims, Holders of Equity Interests, and other interested parties should read carefully the discussion set forth in Article IX for a discussion of certain U.S. federal income tax consequences of the transactions contemplated under the Plan.

## J. No Duty to Update Disclosures

The Plan Proponents have no duty to update the information contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, or unless the Plan Proponents are required to do so under an order of the Bankruptcy Court. Delivery of this Disclosure Statement after the date hereof does not imply that the information contained herein remained unchanged.

1

**ARTICLE VII.**

**CONFIRMATION OF THE PLAN**

2

3

**A. The Confirmation Hearing**

4

5 Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice,  
6 to hold a hearing regarding Confirmation of the Plan. Bankruptcy Code section  
7 1128(b) provides that any party in interest may object to Confirmation of the Plan.  
8

9 The Bankruptcy Court has scheduled the Confirmation Hearing to commence  
10 on **October 16, 2024, at 9:30 a.m. (prevailing Pacific Time)**, before the Honorable  
11 Whitman L. Holt, Tower Bldg, 2nd Floor Courtroom, 402 East Yakima Avenue,  
12 Yakima, WA 98901. The Confirmation Hearing Notice, which sets forth the time and  
13 date of the Confirmation Hearing, has been included along with this Disclosure  
14 Statement. The Confirmation Hearing may be adjourned from time to time without  
15 further notice except for an announcement of the adjourned date made at the  
16 Confirmation Hearing or any adjournment thereof.

17 Objections to Confirmation of the Plan must be filed and served so that they  
18 are actually received by no later than **October 2, 2024, at 4:00 p.m. (prevailing  
19 Pacific Time)**. Unless objections to Confirmation of the Plan are timely served  
20 and filed in compliance with the Disclosure Statement Order, they may not be  
considered by the Bankruptcy Court.

16

**B. Requirements for Confirmation of the Plan**

17

18 Among the requirements for the Confirmation of the Plan is that the Plan (i) is  
19 accepted by all impaired Classes of Claims, or, if rejected by an impaired Class of  
20 Claims, that the Plan “does not discriminate unfairly” and is “fair and equitable” as  
to such impaired Class of Claims; (ii) is feasible; and (iii) is in the “best interests” of  
Holders of Claims.

21 At the Confirmation Hearing, the Bankruptcy Court will determine whether  
22 the Plan satisfies the requirements of Bankruptcy Code section 1129. The Plan  
23 Proponents believe that: (i) the Plan satisfies or will satisfy all of the necessary  
24 statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Plan Proponents  
25 have complied or will have complied with all of the necessary requirements of  
26 chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.  
More specifically, the Plan Proponents believe that the Plan satisfies or will satisfy  
the following applicable Confirmation requirements of Bankruptcy Code section  
1129:

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- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Plan Proponents have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- The Debtors have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of Creditors and Holders of Equity Interests and with public policy.
- Either each Holder of a Claim in an impaired Class of Claims has accepted the Plan, or each such Holder will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code.
- The Classes of Claims that are entitled to vote on the Plan will have accepted the Plan, or at least one Class of impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class, and the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each Class of Claims that is impaired under, and has not accepted, the Plan.
- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Expense Claims and Allowed Priority Claims will be paid in full, in Cash, on the Effective Date, or as soon thereafter as is reasonably practicable and that Holders of Allowed Priority Tax Claims may receive on account of such Claims deferred Cash payments, over a period not exceeding five years after the Petition Date, of a value as of the Effective Date, equal to the Allowed amount of such Claims with interest from the Effective Date.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successor

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BLACK HELTERLINE LLP  
805 SW BROADWAY  
SUITE 1900  
PORTLAND, OR 97205  
TELEPHONE: 503 224-5560

1                   of the Debtors under the Plan, unless such liquidation or reorganization is  
2                   proposed in the Plan. See discussion of “Feasibility,” below.

- 3                   – All accrued and unpaid fees of the type described in 28 U.S.C. § 1930,  
4                   including the fees of the U.S. Trustee, will be paid through the Effective  
Date.

5                   **C. Best Interests of Creditors**

6                   Often called the “best interests of creditors” test, Bankruptcy Code section  
7                   1129(a)(7) requires that a bankruptcy court find, as a condition to confirmation of a  
8                   chapter 11 plan, that the plan provides, with respect to each impaired class, that each  
9                   holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will  
10                  receive or retain under the plan property of a value that is not less than the amount  
11                  that such holder would receive or retain if the debtor liquidated under chapter 7 on  
12                  the effective date of the plan.

13                  The Plan is a plan of liquidation. The costs of liquidation under chapter 7 of  
14                  the Bankruptcy Code would include the fees payable to a chapter 7 trustee, and the  
15                  fees that would be payable to the professional advisors that such a trustee may  
16                  engage.

17                  Conversion to chapter 7 of the Bankruptcy Code would mean the establishment  
18                  of a new claims bar date, which could result in additional General Unsecured Claims  
19                  being asserted against the Estates, thereby diluting the recoveries of Holders of  
20                  Allowed Claims.

21                  Significantly, the Plan embodies a comprehensive, extensively negotiated  
22                  settlement and compromise of myriad novel and complex legal and factual issues. In  
23                  the event of conversion, the chapter 7 trustee would have to initiate extensive  
24                  litigation to resolve these and other issues, or would need to try to negotiate an  
25                  alternative settlement, all without the benefit of committee representation for  
26                  Creditors. This process would be extremely time-consuming and costly, and would  
27                  reduce and delay any recoveries available for Creditors of the Estates.

28                  In addition, a chapter 7 trustee likely would act quickly to sell or otherwise  
29                  monetize the Estate Assets because a chapter 7 trustee probably would not have  
30                  adequate staffing or funding to dispose of the Estate Assets over an extended period  
31                  of time. Such a forced sale by a chapter 7 trustee would likely ultimately result in  
32                  significantly lower recoveries from the sale of the Estate Assets, as set forth in the  
33                  Liquidation Analysis.

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37                   BLACK HELTERLINE LLP  
38                   805 SW BROADWAY  
39                   SUITE 1900  
40                   PORTLAND, OR 97205  
41                   TELEPHONE: 503 224-5560

1           Additionally, the designation of the CRO as one of the initial iCap Trustees  
2 will minimize additional costs and expenses to the Estates because the CRO is  
3 familiar with the Estate Assets and will be able to liquidate such assets faster and  
4 more efficiently than a chapter 7 trustee.

5           On balance, the Plan Proponents believe that a chapter 7 trustee would be less  
6 likely to maximize the value available from all the Estate Assets and would be unable  
7 to obtain the benefits of the compromises and settlements available under the Plan.  
8 Therefore, the Plan Proponents believe that confirmation of the Plan will provide  
9 each Holder of a Claim with an equal or greater recovery than such Holder would  
10 receive pursuant to the liquidation of the Debtors under chapter 7 of the Bankruptcy  
11 Code.

12           **D. Feasibility**

13           Bankruptcy Code section 1129(a)(11) requires that confirmation of the plan is  
14 not likely to be followed by the liquidation, or the need for further financial  
15 reorganization of the Debtors, or any successor to the Debtors (unless such  
16 liquidation or reorganization is proposed in the plan). This requirement is satisfied as  
17 the Plan specifically proposes a liquidation and the Plan Proponents believe the  
18 Debtors' Cash and any additional proceeds from the Estate Assets and the iCap Trust  
19 Assets will be sufficient to allow the iCap Trustees to make all payments required to  
20 be made under the Plan. Accordingly, the Plan Proponents believe that the Plan is  
21 feasible.

22           **E. Acceptance by Impaired Classes**

23           The Bankruptcy Code requires, as a condition to confirmation, that, except as  
24 described in the following section, each class of claims or interests that is impaired  
25 under a plan accept the plan. A class that is not "impaired" under a plan is deemed to  
26 have accepted the plan and, therefore, solicitation of acceptances with respect to such  
27 class is not required.

28           A class is "impaired" unless a plan: (a) leaves unaltered the legal, equitable,  
29 and contractual rights to which the claim or the interest entitles the holder of such  
30 claim or interest; or (b) cures any default, reinstates the original terms of such  
31 obligation, compensates the holder for certain damages or losses, as applicable, and  
32 does not otherwise alter the legal, equitable, or contractual rights to which such claim  
33 or interest entitles the holder of such claim or interest.

1       Bankruptcy Code section 1126(c) defines acceptance of a plan by a class of  
2 impaired claims as acceptance by holders of at least two-thirds in dollar amount and  
3 more than one-half in number of allowed claims in that class, counting only those  
4 claims held by creditors that actually voted to accept or reject the plan. Thus, a Class  
5 of impaired Claims will have voted to accept the Plan only if two-thirds in amount  
6 and a majority in number actually voting cast their Ballots in favor of acceptance.

7

## F. Confirmation Without Acceptance by All Impaired Classes

8       Bankruptcy Code section 1129(b) allows a bankruptcy court to confirm a plan  
9 even if all impaired classes have not accepted that plan, *provided* that the plan has  
10 been accepted by at least one impaired class of claims, determined without including  
11 the acceptance of the plan by any insider. Notwithstanding an impaired class's  
12 rejection or deemed rejection of the plan, such plan will be confirmed, at the plan  
13 proponent's request, in a procedure commonly known as "cramdown," so long as the  
14 plan does not "discriminate unfairly" and is "fair and equitable" with respect to each  
15 class of claims or interests that is impaired under, and has not accepted, the plan.

16       To the extent that any impaired Class rejects the Plan or is deemed to have  
17 rejected the Plan, the Plan Proponents will request Confirmation of the Plan under  
18 Bankruptcy Code section 1129(b). The Plan Proponents reserve the right to alter,  
19 amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule  
20 or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy  
21 Code section 1129(b), if necessary.

22

### 1. No Unfair Discrimination

23       The "unfair discrimination" test applies to classes of claims or interests that  
24 reject or are deemed to have rejected a plan and that are of equal priority with another  
25 class of claims or interests that is receiving different treatment under such plan. The  
26 test does not require that the treatment of such classes of claims or interests be the  
27 same or equivalent, but that such treatment be "fair" under the circumstances. In  
28 general, bankruptcy courts consider whether a plan discriminates unfairly in its  
treatment of classes of claims of equal rank (e.g., classes of the same legal character).  
Bankruptcy courts will take into account various factors in determining whether a  
plan discriminates unfairly, and, accordingly, a plan could treat two classes of  
unsecured creditors differently without unfairly discriminating against either class.  
Because the Plan Proponents are treating all similarly situated creditors the same, the  
Plan does not discriminate unfairly.

1           2. Fair and Equitable Test

2           The “fair and equitable” test applies to classes that reject or are deemed to have  
3 rejected a plan and are of different priority and status vis-à-vis another class (e.g.,  
4 secured versus unsecured claims, or unsecured claims versus equity interests), and  
5 includes the general requirement that no class of claims receive more than 100% of  
6 the amount of the allowed claims in such class, including interest. As to the rejecting  
7 class, the test sets different standards depending on the type of claims or interests in  
8 such rejecting class. The Plan Proponents are requesting that the Bankruptcy Court  
9 confirm the Plan notwithstanding the deemed rejection of the Plan by Class 5  
10 (Subordinated Claims) and Class 6 (Equity Interests).

11          To be fair and equitable with respect to a dissenting class of impaired secured  
12 creditors, a chapter 11 plan must provide that each holder in such class either  
13 (a) retains its liens on the property subject to such liens (or if sold, on the proceeds  
14 thereof) to the extent of the allowed amount of its secured claim and receives deferred  
15 cash payments having a value, as of consummation of the chapter 11 plan, of at least  
16 such allowed amount or (b) receives the “indubitable equivalent” of its secured claim.

17          To be fair and equitable with respect to a dissenting class of impaired unsecured  
18 creditors, a chapter 11 plan must provide that either (a) each holder in such  
19 class receives or retains property having a value, as of consummation of the chapter  
20 11 plan, equal to the allowed amount of its unsecured claim or (b) the holders of  
21 claims and interests that are junior to the claims of the dissenting class will not  
22 receive or retain any property under the plan.

23          To be fair and equitable with respect to a dissenting class of impaired equity  
24 interest holders, a chapter 11 plan must provide that either (a) each holder in such  
25 class receives or retains property having a value, as of consummation of the chapter  
26 11 plan, equal to the greater of (i) the allowed amount of any fixed liquidation  
27 preference or fixed redemption price of its equity interest and (ii) the value of its  
28 equity interest or (b) the holders of equity interests that are junior to the equity  
interests of the dissenting class will not receive or retain any property under the plan.

29          The Plan Proponents believe that the Plan is structured in a way that does not  
30 “discriminate unfairly” and satisfies the “fair and equitable” requirement for  
31 “cramdown” under Bankruptcy Code section 1129(b) with respect to Class 5  
32 (Subordinated Claims) and Class 6 (Equity Interests) because there are no Holders of  
33 Claims or Equity Interests junior to the Claims in Class 5 and the Equity Interests in  
34 Class 6 that will receive Distributions or retain property under the Plan. The Plan  
35 Proponents also may amend the Plan in accordance with Article XII of the Plan and

1 applicable provisions of the Bankruptcy Code to ensure compliance with the  
2 “cramdown” requirements.

3 **G. Classification of Claims and Equity Interests**

4 Bankruptcy Code section 1122 requires the Plan to place a Claim or Equity  
5 Interest in a particular Class only if such Claim or Equity Interest is substantially  
6 similar to the other Claims or Equity Interests in such Class. The Plan creates separate  
7 Classes to deal respectively with Claims and Equity Interests. The Plan Proponents  
8 believe that the Plan’s classifications place substantially similar Claims or Equity  
Interests in the same Class and thus, meet the requirements of Bankruptcy Code  
section 1122.

9 **H. Alternatives to Confirmation and Consummation of the Plan**

10 The Plan Proponents believe that the Plan affords Holders of Claims the  
11 potential for a materially better realization on the Estate Assets than a chapter 7  
liquidation, and, therefore, is in the best interests of all such Holders. If, however, the  
12 requisite acceptances of the voting Classes of Claims are not received, or the Plan is  
13 not confirmed and consummated, the theoretical alternatives include: (a) formulation  
14 of an alternative chapter 11 plan or plans, or (b) liquidation of the Debtors under  
chapter 7 of the Bankruptcy Code.

15 If the requisite acceptances are not received or if the Plan is not confirmed, the  
16 Plan Proponents or another party in interest could attempt to formulate and propose  
17 a different plan or plans. The Plan Proponents believe that the Plan enables Creditors  
18 to realize the greatest possible value under the circumstances, and, as compared to  
any alternative plan, has the greatest chance to be confirmed and consummated.

19 The Chapter 11 Cases may also be converted to cases under chapter 7 of the  
20 Bankruptcy Code, pursuant to which a statutory trustee would be elected or appointed  
21 to complete the liquidation of the Estate Assets for Distribution to Creditors in  
accordance with the priorities established by the Bankruptcy Code. As described  
22 above, the Plan Proponents believe that the Plan will provide each Holder of an  
Allowed Claim with an equal or greater recovery than it would receive pursuant to  
liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

1

ARTICLE VIII.

2 **CERTAIN SECURITIES LAW CONSEQUENCES OF THE PLAN**

3 **A. General**

4     1. Status as Securities

5     The Plan provides for the establishment of the iCap Trust and for the issuance  
6 of beneficial interests therein issued in respect of Allowed Investor Claims and  
7 Allowed General Unsecured Claims. In general, beneficial interests in trusts may  
8 sometimes be subject to regulation under applicable non-bankruptcy law, including  
9 federal and state securities laws. As discussed below, the Debtors believe that the  
10 beneficial interests in the iCap Trust (the “Beneficial Interests”) will either (a) not  
constitute “securities” or (b) will be issued in compliance with such federal and state  
securities laws.

11     2. Transfer Restrictions on Beneficial Interests

12     Under the terms of the iCap Trust Agreement, the Beneficial Interests initially  
13 will be uncertificated and subject to transfer restrictions set forth in the iCap Trust  
14 Agreement (the “Transfer Restrictions”). Under the Transfer Restrictions, the  
15 Beneficial Interests cannot be assigned or transferred by any holder thereof other than  
by will or intestate succession upon the death of such holder or otherwise by  
16 operation of law.

17     The Transfer Restrictions will be effective upon issuance of the Beneficial  
18 Interests on the Effective Date of the Plan and will remain in effect during the initial  
19 and any renewal term of the iCap Trust unless sooner terminated or modified by the  
iCap Trustees in accordance with the iCap Trust Agreement. Under the iCap Trust  
20 Agreement, the iCap Trustees will use their commercially reasonable best efforts to  
file with the SEC, as soon as reasonably practicable following the Effective Date of  
21 the Plan, but in no event later than may be required under Section 12(g) of the  
Exchange Act or the rules and regulations promulgated thereunder, a registration  
22 statement on Form 10 for the purpose of registering the Beneficial Interests under  
Section 12(g) of the Securities Exchange Act of 1934, as amended (the “Exchange  
23 Act”) and to cause the Beneficial Interests to be accepted for trading on the Over-  
the-Counter Bulletin Board (OTCBB) or other organized trading market in the United  
24 States. Upon the effectiveness of the Form 10 and the acceptance of the Beneficial  
Interests for trading on such a market, the iCap Trustees shall amend the iCap Trust  
25 Agreement to terminate or modify the Transfer Restrictions as necessary to permit  
trading of the Beneficial Interests and shall promptly give notice of such amendment  
26

1 to the holders of record of the Beneficial Interests as of the effective date thereof,  
2 which notice will include a copy of the amendment and a summary description of the  
3 termination or modification of the Transfer Restrictions effected thereby and the  
4 terms, conditions, and effective date of such termination or modification. Under the  
5 iCap Trust Agreement, the iCap Trustees will give any such notice of termination or  
6 modification of the Transfer Restrictions reasonably promptly after the effectiveness  
of the Form 10 and the acceptance of the Beneficial Interests for trading on the Over-  
the-Counter Bulletin Board (OTCBB).

7 **B. Exemption From Offer and Sale of Securities Act and Blue Sky Laws**

8     1. Issuance of Beneficial Interests under Plan

9     Unless an exemption is available, the offer and sale of a security generally is  
10 subject to registration with the SEC under Section 5 of the Securities Act of 1933, as  
11 amended (the “Securities Act”). In the event that the Beneficial Interests are deemed  
12 to constitute securities, Bankruptcy Code section 1145(a)(1) exempts the offer and  
13 sale of securities under a plan from registration under the Securities Act and state  
securities laws and regulations (“Blue Sky Laws”) if three principal requirements are  
satisfied:

- 14       – the securities are offered or sold under a plan and are securities of the  
15 debtor, of an affiliate of the debtor participating in a joint plan with the  
16 debtor, or of a successor to the debtor under the plan;  
17       – the recipients of the securities hold a prepetition or administrative claim  
against the debtor or an interest in the debtor; and  
18       – the securities are issued entirely in exchange for recipient’s claim against  
or interest in the debtor, or principally in such exchange and partly for cash  
19 or property.

20     If and to the extent that the Beneficial Interests may constitute securities, the  
21 Debtors believe that the Beneficial Interests, which are being issued in respect of  
22 Allowed Investor Claims and Allowed General Unsecured Claims, will qualify as  
23 securities “of the debtor . . . or of a successor to the debtor” pursuant to section  
24 1145(a)(1). In addition, the Beneficial Interests will be issued entirely in exchange  
25 for such Claims. Thus, the Debtors believe that the issuance of the Beneficial  
Interests pursuant to the Plan will satisfy the applicable requirements of Bankruptcy  
26 Code section 1145(a)(1) and that such issuance should be exempt from registration  
under the Securities Act and any applicable Blue Sky Law.

1           The Debtors believe that their reliance upon the foregoing exemption in respect  
2 of the issuance of the Beneficial Interests is consistent with positions taken by the  
3 SEC with respect to similar transactions and arrangements by other debtors-in-  
4 possession. However, the Debtors have not sought any “no-action” letter by the SEC  
5 with respect to any such matters, and therefore no assurance can be given regarding  
6 the availability of any exemptions from registration with respect to any securities, if  
7 any, issued pursuant to the Plan.

8           2.     Resale of Beneficial Interests After Plan Effective Date

9           As discussed above, during the continuation of the Transfer Restrictions, the  
10 Beneficial Interests cannot be assigned or transferred by any holder thereof other than  
11 by will or intestate succession upon the death of such holder or otherwise by  
12 operation of law. Under the iCap Trust Agreement, the iCap Trustees will terminate  
13 or modify the Transfer Restrictions as necessary following the effectiveness of the  
14 registration of the Beneficial Interests under Section 12(g) of the Exchange Act and  
15 the acceptance of the Beneficial Interests for quotation on the Over-the-Counter  
16 Bulletin Board (OTCBB) or other organized over-the-counter trading market in the  
17 United States. If the Transfer Restrictions are so terminated or modified, the  
18 Beneficial Interests may become transferable to the extent otherwise permissible  
19 under applicable law. However, no assurance can be given that the iCap Trustees will  
20 be successful in causing the registration of the Beneficial Interests or their acceptance  
21 for trading on any such organized trading market. None of the Debtors or the iCap  
22 Trustees will be obliged to, and it is expected that none of them will, seek the listing  
23 of any Beneficial Interest on any national stock exchange such as the NYSE,  
24 NASDAQ Stock Market, or NASDAQ National Market.

25           3.     Exchange Act and Other Securities Law Compliance

26           Section 12(g) of the Exchange Act, and the Exchange Act rules and regulations  
27 promulgated thereunder, requires a company to register a class of equity securities  
28 pursuant to the Exchange Act unless, on the last day of such company’s most recent  
fiscal year, (i) the company had total assets not exceeding \$10.0 million and (ii) the  
class of equity securities was held of record by fewer than 2,000 persons and fewer  
than 500 of those persons were not “accredited investors” as defined under the  
securities laws. Such registration must be effected by the filing of a registration  
statement within 120 days after the last day of the company’s most recent fiscal year  
in which both such conditions (i) and (ii) are satisfied. Based on the iCap Trust’s  
anticipated total assets and number of holders of record of Class A iCap Trust  
Interests as of the last day of its first (partial) fiscal year, the Debtors currently expect  
that the iCap Trust, will be required to register the Class A iCap Trust Interests under

1 the Exchange Act within 120 days thereafter. It is anticipated that there will be fewer  
2 than 2,000 holders of record of Class B iCap Trust Interests and, as such, the iCap  
3 Trust currently does not intend to make any effort to cause the Class B iCap Trust  
4 Interests to be registered under the Exchange Act. To the extent that the total assets  
5 of the iCap Trust and the number of the holders of record of Class B iCap Trust  
6 Interests as of the last day of the iCap Trust's fiscal year exceeds the specified limits  
7 under the Exchange Act, the iCap Trust shall take any and all steps as may be  
8 necessary to comply with the Exchange Act and the rules and regulations  
9 promulgated thereunder.

10 As discussed above, during the continuation of the Transfer Restrictions, the  
11 Beneficial Interests cannot be assigned or transferred by any holder thereof other than  
12 by will or intestate succession upon the death of such holder or otherwise by  
13 operation of law. Under the iCap Trust Agreement, the iCap Trustees will terminate  
14 or modify the Transfer Restrictions as necessary following the effectiveness of the  
15 registration of the Beneficial Interests under Section 12(g) of the Exchange Act and  
16 the acceptance of the Beneficial Interests for trading on the Over-the-Counter  
17 Bulletin Board (OTCBB) or other organized trading market in the United States. If  
18 the Transfer Restrictions are so terminated or modified, the Beneficial Interests may  
19 become transferable under the iCap Trust Agreement to the extent otherwise  
20 permissible under applicable law. In such case, the Beneficial Interests may be  
21 permitted to be represented by certificates and/or may become transferable.  
22 However, no assurance can be given regarding these matters.

23 If the Beneficial Interests are successfully registered as one or more classes of  
24 equity securities under Section 12(g) of the Exchange Act, the iCap Trust will  
25 become subject to regulation under the Exchange Act. Such regulation will include  
periodic reporting such as the filing of annual reports on Form 10-K and quarterly  
reports on Form 10-Q, current reporting of certain material events on Form 8-K,  
proxy statements, and disclosures regarding various other events affecting the iCap  
Trust, such as mergers, acquisitions, tender offers, and changes in beneficial  
ownership. Although such registration of the Beneficial Interests and the following  
termination or modification of the Transfer Restrictions may benefit iCap Trust  
Beneficiaries by increasing the liquidity of their iCap Trust Interests, such  
registration and the iCap Trust's compliance with such regulations will impose  
substantial costs on the iCap Trust, and thereby may reduce Distributions made in  
respect of Beneficial Interests to the holders thereof.

26  
27  
28

**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

1

**ARTICLE IX.**

2       **CERTAIN UNITED STATES FEDERAL INCOME TAX**

3       **CONSEQUENCES OF THE PLAN**

4

5       **THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

6       **ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS**

7       **SHOULD CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE**

8       **PARTICULAR TAX CONSEQUENCES TO THEM OF THE**

9       **TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE**

10      **APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN**

11      **TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

12

13      This discussion is provided for informational purposes only, and is based on

14      provisions of the IRC, Treasury Regulations promulgated thereunder, judicial

15      authorities, and current administrative rulings and practice, all as in effect on the date

16      hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable

17      legal precedent, the possibility of changes in the law, the differences in the nature of

18      the Claims (including Claims within the same Class) and Equity Interests, the

19      Holder's status and method of accounting (including the Holders within the same

20      Class) and the potential for disputes as to legal and factual matters with the IRS, the

21      tax consequences described herein are subject to significant uncertainties. No legal

22      opinions have been requested from counsel with respect to any of the tax aspects of

23      the Plan and no rulings have been or will be requested from the IRS with respect to

24      the any of the issues discussed below. Further, legislative, judicial, or administrative

25      changes may occur, perhaps with retroactive effect, which could affect the accuracy

26      of the statements and conclusions set forth below as well as the tax consequences to

27      Holders of Claims and Equity Interests. Any such changes or interpretations may be

28      retroactive and could significantly, and adversely, affect the United States federal

income tax consequences of the Plan.

1      The following summary does not address the U.S. federal income tax

2      consequences to Holders of Claims not entitled to vote to accept or reject the Plan.

3      In addition, to the extent that the following discussion relates to the consequences to

4      Holders of Claims entitled to vote to accept or reject the Plan, it is limited to the

5      Holders that are United States persons within the meaning of the IRC. For purposes

6      of the following discussion, a "United States person" is any of the following:

- 7
- 8      • An individual who is a citizen or resident of the United States;
  - 9      • A corporation created or organized under the laws of the United States or

10      any state or political subdivision thereof;

11      **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**

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17      PORTLAND, OR 97205  
18      TELEPHONE: 503 224-5560

- 1           • An estate, the income of which is subject to federal income taxation  
2            regardless of its source; or  
3           • A trust that (a) is subject to the primary supervision of a United States court  
4            and which has one or more United States fiduciaries who have the authority  
5            to control all substantial decisions of the trust, or (b) has a valid election in  
6            effect under applicable Treasury Regulations to be treated as a United  
7            States person.

8           This discussion does not address all aspects of U.S. federal income taxation  
9           that may be relevant to a particular Holder in light of its particular facts and  
10          circumstances, or to certain types of Holders subject to special treatment under the  
11          IRC. Examples of Holders subject to special treatment under the IRC include,  
12          without limitation, governmental entities and entities exercising governmental  
13          authority, foreign companies, persons who are not citizens or residents of the United  
14          States, banks and certain other financial institutions, broker-dealers, insurance  
15          companies, tax-exempt organizations, real estate investment trusts, small business  
16          investment companies, regulated investment companies, persons that have a  
17          functional currency other than the U.S. dollar, and persons holding Claims that are  
18          part of a hedging, straddle, constructive sale, conversion transaction, or other risk-  
19          reduction transaction. This discussion does not address the tax consequences to  
Holders of Claims who did not acquire such Claims at the issue price on original  
issue. No aspect of foreign, state, local, or estate and gift taxation is addressed. The  
tax consequences to a partner in a partnership holding Claims will depend on the  
status of the partner and the activities of the partnership. Partnerships holding  
Allowed Claims and partners in such partnerships should consult their tax advisors  
as to the particular United States federal income tax consequences of owning and  
disposing of Allowed Claims.

20          The tax consequences to Holders of Allowed Claims and the character,  
21          amount, and timing of income, gain, or loss recognized as a consequence of the Plan  
22          and the Distributions provided for by the Plan may vary, depending upon the  
23          following factors, among others: (i) whether the Claim or portion thereof constitutes  
24          a Claim for principal or interest; (ii) the type of consideration, if any, received by the  
Holder in exchange for the Claim, and whether the Holder receives Distributions  
under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or  
resident of the United States for tax purposes, is otherwise subject to U.S. federal  
income tax on a net basis, or falls into any special class of taxpayers, such as those  
that are excluded from this discussion as noted above; (iv) the manner in which the  
Holder acquired the Claim; (v) the length of time that the Claim has been held;

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(vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction or a worthless securities deduction with respect to the Claim or any portion thereof in the current or prior taxable years; (viii) whether the Holder has previously included in gross income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the “market discount” rules apply to the Holder. Therefore, each Holder should consult such Holder’s own tax advisor for tax advice with respect to that Holder’s particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

This discussion is based on the IRC, Treasury Regulations promulgated thereunder, administrative rulings, and other guidance and court decisions, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effect. A significant amount of time may elapse between the date of the Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of the Disclosure Statement, such as new or additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling will be sought from the IRS and no representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Holder of a Claim. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein.

The following discussion generally assumes that the Plan will be treated as a plan of liquidation of the Debtors for U.S. federal income tax purposes, and that all Distributions to Holders of Claims will be taxed accordingly.

THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT SUCH HOLDER'S INDEPENDENT

**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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1           **TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND**  
2           **FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.**

3           **A. Certain U.S. Federal Income Tax Consequences of the iCap Trust**

4           Under the terms of the Plan, the iCap Trust Assets will be transferred to the  
5           iCap Trust in a taxable disposition. Any income or gain from the transfer of assets to  
6           the iCap Trust shall flow through to the ultimate taxpaying owner or member of the  
7           transferring Debtor who will be responsible to pay any resulting tax liability. The tax  
8           consequences of the Plan, however, are subject to many uncertainties due to the  
9           complexity of the Plan and the lack of interpretative authority regarding certain  
10          changes in the tax law. Uncertainties with regard to federal income tax consequences  
11          of the Plan also arise due to the inherent nature of estimates of value that will impact  
12          the determination of the amount of income or gain from the transfer of assets to the  
13          iCap Trust. As of the Effective Date, the iCap Trust shall be established for the  
14          benefit of all iCap Trust Beneficiaries. The iCap Trustees will make a good faith  
15          valuation of the iCap Trust Assets. All parties (including, without limitation, the iCap  
16          Trustees and the iCap Trust Beneficiaries) must consistently use such valuation for  
17          all federal income tax purposes. Allocations of taxable income of the iCap Trust  
18          (other than taxable income allocable to a Distribution Reserve) among the iCap Trust  
19          Beneficiaries shall be determined by reference to the manner in which an amount of  
20          cash equal to such taxable income would be distributed (were such cash permitted to  
21          be distributed at such time) if, immediately prior to such deemed Distribution, the  
22          iCap Trust had distributed all of its assets (valued at their tax book value, and other  
23          than assets allocable to a Distribution Reserve) to the Holders of the beneficial  
24          interests in the iCap Trust, adjusted for prior taxable income and loss and taking into  
25          account all prior and concurrent Distributions from the iCap Trust. Similarly, taxable  
26          loss of the iCap Trust shall be allocated by reference to the manner in which an  
27          economic loss would be borne immediately after a Distribution in liquidation of the  
28          remaining iCap Trust Assets. The tax book value of the iCap Trust Assets for this  
                purpose shall be equal to the fair market value of the iCap Trust Assets on the  
                Effective Date, adjusted in accordance with tax accounting principles prescribed by  
                the IRC, applicable Treasury Regulations, and other applicable administrative and  
                judicial authorities and pronouncements. Subject to definitive guidance from the IRS  
                or a court of competent jurisdiction to the contrary (including the receipt by the iCap  
                Trustees of an IRS private letter ruling if the iCap Trustees so request one, or the  
                receipt of an adverse determination by the IRS upon audit if not contested by the iCap  
                Trustees), the iCap Trustees may (a) elect to treat any iCap Trust Assets allocable to  
                a Distribution Reserve (a reserve for amounts and iCap Trust Interests retained on  
                account of, Contingent Claims, Disputed Claims, or Unliquidated Claims) as a

1 “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and  
2 (b) to the extent permitted by applicable law, report consistently with the foregoing  
3 for state and local income tax purposes. Accordingly, the Distribution Reserves may  
4 be subject to tax annually on a separate entity basis on any net income earned with  
5 respect to the iCap Trust Assets in such reserves, and all Distributions from such  
6 reserves will be treated as received by the Holders in respect of their Claims as if  
7 distributed by the Debtors. All parties (including, without limitation, the iCap  
8 Trustees and the Holders of Beneficial Interests in the iCap Trust) will be required to  
9 report for tax purposes consistently with the foregoing.

10 The iCap Trust is intended to qualify as a liquidating trust for federal income  
11 tax purposes. In general, a liquidating trust is not a separate taxable entity but rather  
12 is treated for federal income tax purposes as a “grantor” trust (*i.e.*, a pass-through  
13 entity). The IRS, in Revenue Procedure 94-45, 1994-28 I.R.B. 124, set forth the  
14 general criteria for obtaining an IRS ruling as to the grantor trust status of a  
15 liquidation trust under a chapter 11 plan. The iCap Trust has been structured with the  
16 intention of complying with such general criteria. Pursuant to the Plan, and in  
17 conformity with Revenue Procedure 94-45, all parties (including the iCap Trustees  
18 and the Holders of Beneficial Interests in the iCap Trust) are required to treat for  
19 federal income tax purposes, the iCap Trust as a grantor trust of which Holders of  
20 iCap Trust Interests are the owners and grantors. Although the following discussion  
assumes that the iCap Trust would be so treated for federal income tax purposes, no  
ruling has been requested from the IRS concerning the tax status of the iCap Trust as  
a grantor trust. Accordingly, there can be no assurance that the IRS would not take a  
contrary position to the classification of the iCap Trust as a grantor trust. If the IRS  
were to successfully challenge such classification, the federal income tax  
consequences to the iCap Trust and Holders of iCap Trust Interests could vary from  
those discussed herein, and, thus, there could be less Available Cash than projected,  
resulting in lower recoveries for Holders of iCap Trust Interests.

21 The iCap Trust may create a single member limited liability company  
22 (the “Wind-Down Entity”) to facilitate administration of the assets to be liquidated.  
23 In such case, the Wind-Down Entity shall (a) be wholly owned by the iCap Trust,  
24 (b) be disregarded as separate from the iCap Trust for U.S. federal income tax  
purposes, (c) have a purpose consistent with the purpose of the iCap Trust as set forth  
in Section D.5 of Article V of the Plan, and (d) be subject to the same limitations  
imposed on the iCap Trustees under the terms of the Plan and the iCap Trust  
Agreement. Consequently, the existence of, and the activities conducted by, the  
Wind-Down Entity (if any), should not alter the federal income tax treatment of the  
iCap Trust or the iCap Trust Beneficiaries as described herein.

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MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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1           **B. Consequences to Holders of Claims Generally**

2           In general, each Holder of an Allowed Claim will recognize gain or loss in an  
3 amount equal to the difference between (i) the “amount realized” by such Holder in  
4 satisfaction of its Claim, and (ii) such Holder’s adjusted tax basis in such Claim  
5 (which, for certain iCap Trust Beneficiaries, could be impacted by the Debtors’ filing  
6 of amended IRS Forms 1099 for the iCap Trust Beneficiaries with respect to the 2023  
7 calendar year in accordance with a determination that the Debtors were operating a  
8 Ponzi scheme and any amounts paid by the Debtors to such iCap Trust Beneficiaries  
9 in 2023 were not in fact taxable income). The “amount realized” by a Holder will  
10 equal the sum of cash and the aggregate fair market value of the property received  
11 by such Holder pursuant to the Plan (such as a Holder’s undivided Beneficial Interest  
12 in the assets transferred to the iCap Trust). Where gain or loss is recognized by a  
13 Holder in respect of its Allowed Claim, the character of such gain or loss (*i.e.*, long-  
14 term or short-term capital, or ordinary income) will be determined by a number of  
15 factors including the tax status of the Holder, whether the Claim constituted a capital  
asset in the hands of the Holder and how long it had been held, whether the Claim  
was originally issued at a discount or acquired at a market discount, and whether and  
to what extent the Holder had previously claimed a bad debt deduction or theft loss  
in respect of the Claim. Each Holder of an Allowed Claim should consult its own tax  
advisor to determine whether gain or loss recognized by such Holder will be long-  
term capital gain or loss and the specific tax effect thereof on such Holder.

16           A Holder of an Allowed Claim who receives, in respect of the Holder’s  
17 Allowed Claim, an amount that is less than that Holder’s tax basis in such Allowed  
18 Claim may be entitled to a bad debt deduction under IRC section 166(a) or a theft  
19 loss deduction under IRC section 165(e). The rules governing the character, timing,  
20 and amount of a bad debt deduction place considerable emphasis on the facts and  
circumstances of the Holder, the obligor, and the instrument with respect to which a  
21 deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their  
22 own tax advisors with respect to the ability to take a bad debt deduction. Rules  
relating to theft loss deductions, which are described in more detail below, are also  
23 potentially complex, and the timing and amount of any such loss may be affected by  
whether a Holder elects to apply certain IRS safe harbor procedures relating to losses  
realized by Investors in certain fraudulent investment schemes. Holders of Allowed  
24 Claims, therefore, are urged to consult their own tax advisors with respect to the  
ability to take either a bad debt or theft loss deduction. A Holder that has previously  
25 recognized a loss or deduction in respect of that Holder’s Allowed Claim may be  
required to include in gross income (as ordinary income) any amounts received under  
26  
27

1 the Plan to the extent such amounts exceed the Holder's adjusted basis in such  
2 Allowed Claim.

3 Holders of Allowed Claims who were not previously required to include any  
4 accrued but unpaid interest with respect to an Allowed Claim may be treated as  
5 receiving taxable interest income to the extent any consideration they receive under  
6 the Plan is allocable to such interest. A Holder previously required to include in gross  
7 income any accrued but unpaid interest with respect to an Allowed Claim may be  
8 entitled to recognize a deductible loss to the extent such interest is not satisfied under  
9 the Plan.

10 A Holder of an Allowed Claim constituting an installment obligation for tax  
11 purposes may be required to currently recognize any gain remaining with respect to  
12 such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at  
13 other than at face value or distributed, transmitted, sold, or otherwise disposed of  
14 within the meaning of IRC section 453B.

15 Holders of Disallowed Claims will not receive any Distribution as part of the  
16 Plan. Accordingly, because such a Holder may receive an amount that is less than  
17 that Holder's tax basis in such Claim, such Holder may be entitled to a bad debt  
18 deduction under IRC section 166(a) or a theft loss deduction under IRC section  
19 165(e). The rules governing the character, timing, and amount of a bad debt deduction  
20 place considerable emphasis on the facts and circumstances of the Holder, the  
21 obligor, and the instrument with respect to which a bad debt deduction is claimed.  
22 Holders of Disallowed Claims, therefore, are urged to consult their own tax advisors  
23 with respect to the ability to take a bad debt deduction.

### 24 C. Consequences to the iCap Trust Beneficiaries

25 After the Effective Date, any amount that an iCap Trust Beneficiary (as a  
26 Holder of an iCap Trust Interest) receives as a Distribution from the iCap Trust in  
27 respect of its Beneficial Interest in the iCap Trust should not be included in the  
Holder's amount realized in respect of its Allowed Claim for U.S. federal income tax  
purposes, but should be separately treated as a Distribution received in respect of  
such Holder's Beneficial Interest in the iCap Trust. In general, a Holder's aggregate  
tax basis in its undivided Beneficial Interest in the assets transferred to the iCap Trust  
will equal the fair market value of such undivided Beneficial Interest as of the  
Effective Date and the Holder's holding period in such assets will begin the day  
following the Effective Date. Distributions to any Holder of an Allowed Claim will  
be allocated first to the original principal portion of such Claim as determined for  
federal tax purposes, and then, to the extent the consideration exceeds such amount,

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1 to the remainder of such Claim. However, there is no assurance that the IRS will  
2 respect such allocation for federal income tax purposes.

3 For all federal income tax purposes, all parties (including the iCap Trustees  
4 and the Holders of Beneficial Interests in the iCap Trust) shall treat the transfer of  
5 the iCap Trust Assets to the iCap Trust, in accordance with the terms of the Plan, as  
6 a transfer of those assets directly to Holders of Allowed Claims (and, with respect to  
7 the Contingent Claims, Disputed Claims, and Unliquidated Claims, to the  
8 Distribution Reserve) followed by the transfer of such assets by such Holders to the  
9 iCap Trust. Consistent therewith, all parties shall treat the iCap Trust as a grantor  
10 trust of which such Holders are to be the owners and grantors. Thus, such Holders  
11 (and any subsequent Holders of interests in the iCap Trust) shall be treated as the  
12 direct owners of an undivided Beneficial Interest in the assets of the iCap Trust.  
13 Accordingly, each Holder of a Beneficial Interest in the iCap Trust will be required  
14 to report on its federal income tax return(s) the Holder's allocable share of all income,  
15 gain, loss, deduction, or credit recognized or incurred by the iCap Trust. The iCap  
16 Trust's taxable income will be allocated to the Holders of Beneficial Interests in the  
17 iCap Trust in accordance with each such Holder's pro rata share of the Beneficial  
18 Interests in the iCap Trust Assets. The character of items of income, deduction, and  
19 credit to any Holder and the ability of such Holder to benefit from any deductions or  
20 losses may depend on the particular situation of such Holder. The federal income tax  
21 reporting obligation of a Holder of a Beneficial Interest in the iCap Trust is not  
22 dependent upon the iCap Trust distributing any cash or other proceeds. Therefore, a  
23 Holder of a Beneficial Interest in the iCap Trust may incur a federal income tax  
24 liability regardless of the fact that the iCap Trust has not made, or will not make, any  
25 concurrent or subsequent Distributions to the Holder. If a Holder incurs a federal tax  
26 liability but does not receive Distributions commensurate with the taxable income  
allocated to it in respect of its beneficial interests in the iCap Trust, the Holder may  
be allowed a subsequent or offsetting loss.

27 The iCap Trustees will file with the IRS returns for the iCap Trust as a grantor  
28 trust pursuant to Treasury Regulations section 1.671-4(a). The iCap Trustees will  
also send to each Holder of a Beneficial Interest in the iCap Trust a separate statement  
setting forth the Holder's share of items of income, gain, loss, deduction, or credit  
and will instruct the Holder to report such items on its federal income tax return.  
Events subsequent to the date of this Disclosure Statement, such as the enactment of  
additional tax legislation, could also change the federal income tax consequences of  
the Plan and the transactions contemplated thereunder.

28  
**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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An iCap Trust Beneficiary who is a victim of a Ponzi scheme might be entitled to claim a loss dependent on its individual circumstances. Such losses that arise out of property used in a trade or business or a transaction entered into for profit are deductible in the year in which the loss is sustained and in an amount not to exceed the adjusted tax basis of the property involved. A theft loss generally cannot be deducted in a tax year to the extent that there are reasonable prospects of a recovery of some or all of the loss. In that event, the deduction is postponed until it can be ascertained with reasonable certainty the likelihood and amount of any reimbursement that will be received. The loss generally must be deducted in the first year a reasonable prospect of recovery no longer exists, and cannot be claimed in any subsequent year. The reasonable prospect of reimbursement rule applies only to that part of the loss for which reimbursement is available. However, in 2009, the IRS issued Rev. Proc. 2009-20, 2009-14 I.R.B. 735, to provide an optional safe harbor treatment for taxpayers that experienced losses in certain investment arrangements discovered to be fraudulent and in which a lead figure has been charged with a crime. Under these safe harbor provisions, a qualified investor (as defined in Rev. Proc. 2009-20) may deduct 95% of its qualified investment (as defined in Rev. Proc. 2009-20) in the discovery year (*i.e.*, the year in which an indictment, information, or complaint described in section 4.02 of Revenue Procedure 2009-20 is filed) if the qualified investor does not pursue any potential third-party recovery minus the sum of any actual recovery and any potential insurance / SIPC recovery. A 75% deduction is available in the discovery year if a qualified investor is pursuing or intends to pursue any potential third-party recovery minus the sum of any actual recovery and any potential insurance / SIPC recovery. The details for qualification for the safe harbor deduction are set forth in Rev. Proc. 2009-20.

In 2011, the IRS issued Rev. Proc. 2011-58, 2011-58 I.R.B. 849, which modified certain provisions of Rev. Proc. 2009-20. Under Rev. Proc. 2011-58, the safe harbor provisions of Rev. Proc. 2009-20 may be utilized if a lead figure, or an associated entity involved in the specified fraudulent arrangement, was the subject of one or more civil complaints or similar documents that a state or federal governmental entity filed with a court or in an administrative agency enforcement proceeding, and:

(a) The civil complaint or similar documents together allege facts that comprise substantially all of the elements of a specified fraudulent arrangement conducted by the lead figure;

(b) The death of the lead figure precludes a charge by indictment, information, or criminal complaint against that lead figure; and

**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
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(c) A receiver or trustee was appointed with respect to the arrangement or assets of the arrangement were frozen.

A strict reading of Rev. Proc. 2011-58 would require that, unless the lead figure's death precludes the filing of a criminal indictment or criminal complaint, there must be an indictment or criminal complaint filed against the lead figure in order for safe harbor rules of Rev. Proc. 2009-20 to be available to victims of a Ponzi scheme. To date, no lead figure has been charged with a crime or is deceased, so the necessary prerequisites for the safe harbor for a deduction in 2024 do not appear to have been satisfied. The Revenue Procedures simply provide a safe harbor, however, and there might be individual circumstances outside the safe harbor that warrant an iCap Trust Beneficiary taking a position that the theft loss occurred with respect to the 2023 taxable year. The iCap Trust Beneficiaries should consult with their own tax advisors to determine if a theft loss deduction is permissible, as well as the timing, amount, and applicable limitations for any such theft loss deduction.

#### **D. Withholding on Distributions and Information Reporting**

All Distributions to Holders of Allowed Claims under the Plan and any Distributions to the Holders of Beneficial Interests in the iCap Trust are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then applicable withholding rate (currently 24%). Backup withholding generally applies if the payment recipient (i) fails to furnish the recipient’s social security number or other taxpayer identification number; (ii) furnishes an incorrect taxpayer identification number; (iii) fails to properly report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the taxpayer’s identification number provided is the recipient’s correct taxpayer identification number and that such recipient is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain Persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, a Holder of an Allowed Claim that is not a U.S. entity may be subject to additional withholding, the imposition and amount of which may depend on, among other things, the particular type of income and whether the Holder is eligible to claim benefits under an income tax treaty with the United States. As to certain Claims, it is possible that withholding may be required with respect to Distributions by the Debtor making such Distribution or by the iCap Trust, as

1 applicable, even if no withholding would have been required if payment was made  
2 prior to the Chapter 11 Cases. A non-U.S. Holder may also be subject to other adverse  
3 consequences in connection with the implementation of the Plan. As discussed above,  
4 the foregoing discussion of the U.S. federal income tax consequences of the Plan  
5 does not generally address the consequences to non-U.S. Holders. Non-U.S. Holders  
6 are urged to consult their own tax advisors regarding potential withholding on  
7 Distributions under the Plan.

8 In addition, Treasury Regulations generally require disclosure by a taxpayer  
9 on its U.S. federal income tax return of certain types of transactions in which the  
10 taxpayer participated, including, among other types of transactions, certain  
11 transactions that result in the taxpayer's claiming a loss in excess of specified  
thresholds. The Holders are urged to consult their own tax advisors regarding these  
Treasury Regulations and whether the transactions contemplated by the Plan would  
be subject to these Treasury Regulations and require disclosure on the Holder's tax  
returns.

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**MODIFIED SECOND AMENDED DISCLOSURE STATEMENT  
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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1  
2                   **ARTICLE X.**  
3                   **RECOMMENDATION**

4                   The Plan Proponents believe that Confirmation and implementation of the Plan  
5                   are the best alternative under the circumstances and urge all impaired Creditors  
6                   entitled to vote on the Plan to vote in favor of and support confirmation of the Plan.

7                   DATED this 30th day of August 2024.  
8  
9

10                  BLACK HELTERLINE LLP  
11  
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14

15                  By /s/ Oren B. Haker  
16                  OREN B. HAKER, WSBA No. 48725  
17                  BLACK HELTERLINE LLP  
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29                  *Co-Counsel to Debtors and Debtors in Possession*

30                  And

31                  JULIAN I. GURULE (Admitted *Pro Hac Vice*)  
32                  O'MELVENY & MYERS LLP  
33  
34                  *Co-Counsel to Debtors and Debtors in Possession*

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38                  **MODIFIED SECOND AMENDED DISCLOSURE STATEMENT**  
39                  **FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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**EXHIBIT A**  
**Joint Chapter 11 Plan**

1 HONORABLE WHITMAN L. HOLT  
2  
3  
4  
5  
6

7 UNITED STATES BANKRUPTCY COURT  
8 EASTERN DISTRICT OF WASHINGTON

9 In re  
10 iCap ENTERPRISES, INC., *et al.*,  
11  
12 Debtors.<sup>1</sup>

13 Chapter 11  
14  
15

16 Lead Case No. 23-01243-WLH11  
17 Jointly Administered

18 MODIFIED SECOND AMENDED  
19 JOINT CHAPTER 11 PLAN OF  
20 LIQUIDATION OF iCap  
21 ENTERPRISES, INC. AND ITS  
22 AFFILIATED DEBTORS  
23 PROPOSED BY THE DEBTORS  
AND OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

1 The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

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25 JOINT PLAN OF LIQUIDATION – Page 1

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## INTRODUCTION<sup>2</sup>

iCap Enterprises, Inc. and its affiliated debtors propose this Plan, which resolves the outstanding Claims and Equity Interests that have been asserted against the Debtors. The court has approved the Disclosure Statement filed by the Debtors and it contains a detailed discussion of the Debtors' historical operations and assets; a summary of this Plan; and a discussion of risk factors and uncertainties associated with the Plan that may impact both consummation of the Plan as well as any Distributions projected to be made under the Plan.

YOU ARE URGED TO READ THE DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY TO DETERMINE HOW THEY MAY IMPACT YOUR CLAIM BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.** **DEFINED TERMS AND RULES OF INTERPRETATION**

## A. Definitions

A term used in this Plan that is not defined below and that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning ascribed in the Bankruptcy Code or the Bankruptcy Rules, as applicable. When used in this Plan, the following terms shall have the meanings specified below, unless the context otherwise requires:

1. Administrative Expense Claim: A Claim entitled to priority under Bankruptcy Code section 507(a)(2), including (a) claims incurred by the Debtors since the Petition Date and allowed by the Court of a type described in Bankruptcy Code section 503(b); (b) all Allowed Claims of Professional Persons pursuant to Bankruptcy Code sections 330 and 331 and Bankruptcy Rule 2016; and (c) all fees and charges assessed against the Estates under 28 U.S.C. § 1930.

2. Allowed Claim: Any Claim in the amount and of the priority classification set forth in the proof of such Claim that has been filed timely in the

<sup>2</sup> Capitalized terms in the Introduction have the meanings set forth in Article I below.

**MODIFIED SECOND AMENDED  
JOINT PLAN OF LIQUIDATION – Page 2**

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1 Chapter 11 Cases, or in the absence of such proof, as set forth in the Schedules filed in  
2 the Chapter 11 Cases, unless:

3 (i) with respect to a Scheduled Claim that is not otherwise the subject of a  
4 proof of Claim, such Claim has been (a) listed in the Schedules as disputed, contingent,  
5 or unliquidated or (b) objected to or is objected to after Confirmation, in which case  
6 such Claim shall be allowed only in such amount and such classification as is either  
7 agreed to by the iCap Trust or as otherwise authorized by Final Order of the  
8 Bankruptcy Court;

9 (ii) with respect to a Filed Claim, such Claim has been objected to or is  
10 objected to after Confirmation, in which case such claim shall be allowed only in such  
11 amount and such classification as is either agreed to by the iCap Trust or as otherwise  
12 authorized by Final Order of the Bankruptcy Court; or

13 (iii) such Claim has been paid in full, withdrawn, or otherwise deemed  
14 satisfied in full.

15 3. Available Cash: All Cash held by the Debtors on the Effective Date or by  
16 the iCap Trust on or after the Effective Date, after accounting for the Senior Claims  
17 Reserve and the Secured Claims Reserves. Available Cash shall be determined after  
18 payment, allocation, or reserve in accordance with the Plan for unpaid or unutilized  
19 amounts for iCap Trust Funding.

20 4. Avoidance Actions: Any and all causes of action, claims, remedies, or  
21 rights that may be brought by or on behalf of the Debtors or the Estates under  
22 Bankruptcy Code sections 542, 544, 547, 548, 549, 550, 551, or 553, or under related  
23 state or federal statutes, or pursuant to any theory or cause of action under common  
law, regardless whether such action has been commenced prior to the Effective Date.

24 5. Ballot: The form for acceptance or rejection of the Plan distributed to  
25 those Creditors entitled to vote on the Plan. Any Ballot that is executed by the Holder  
26 of an Allowed Claim but that does not indicate an acceptance or rejection of the Plan  
27 shall be deemed to be an acceptance of the Plan.

28 MODIFIED SECOND AMENDED  
29 JOINT PLAN OF LIQUIDATION – Page 3

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1           6.    Bankruptcy Code or Code: The Bankruptcy Code enacted November 6,  
2           1978, as set forth in Title 11 of the United States Code, and as amended thereafter.

3           7.    Bankruptcy Court or Court: The United States Bankruptcy Court for the  
4           Eastern District of Washington at Yakima, before which the Chapter 11 Cases are  
5           pending, or if that Court ceases to exercise jurisdiction over the Chapter 11 Cases, the  
6           Court that does exercise jurisdiction.

7           8.    Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure and any  
8           applicable Local Rules of the Bankruptcy Court, as amended from time to time.

9           9.    Broker Settlement: Any settlement between the iCap Trust and any  
10          “broker,” registered investment advisor, salesperson, consultant, affiliated entity, or  
11          professional who is not an Excluded Party and was involved in any way in the  
12          marketing or sale of any products offered by any of the Debtors.

13          10.    Business Day: Any day except Saturday, Sunday, or a “legal holiday” as  
14          defined in Bankruptcy Rule 9006(a)(6).

15          11.    Case Closing Date: The date on which all Chapter 11 Cases have been  
16          closed.

17          12.    Cash: Legal tender of the United States of America or cash equivalents  
18          including, but not limited to, bank deposits, wire transfers, checks, and other similar  
19          items.

20          13.    Causes of Action: Any and all claims, rights, actions, causes of action,  
21          liabilities, obligations, suits, debts, remedies, dues, sums of money, accounts,  
22          reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements,  
23          promises, variances, trespasses, rights of setoff, third-party claims, subordination  
24          claims, subrogation claims, contribution claims, reimbursement claims, indemnity  
25          claims, counterclaims and cross claims, damages, or judgments whatsoever, whether  
26          known or unknown, reduced to judgment, liquidated or unliquidated, fixed or  
27          contingent, matured or unmatured, disputed or undisputed, foreseen or unforeseen,  
28          asserted or unasserted, existing or hereafter arising, in law, at equity, by statute,  
29          whether for tort, fraud, contract, or otherwise, including any and all claims that

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1       constitute property of the Estates pursuant to Bankruptcy Code section 541. For the  
2 avoidance of doubt, “Causes of Action” include: (a) the right to object to Claims or  
3 Equity Interests; (b) any claim pursuant to Bankruptcy Code section 362; (c) any  
4 counterclaim or defense, including fraud, mistake, duress, usury, or recoupment; and  
5 (d) any Avoidance Actions.

6       14. Chapter 11 Cases: The chapter 11 bankruptcy cases commenced by the  
7 Debtors, which are being jointly administered under the case caption In re iCap  
8 Enterprises, Inc., et al., Case No. 23-01243-WLH.

9       15. Claim: A claim as defined in Bankruptcy Code section 101(5).

10       16. Claim Objection Deadline: The first Business Day that is on or before (a)  
11 the 180th day following the later of (i) the Effective Date and (ii) the date that a proof  
12 of Claim is amended or a Claim is otherwise asserted or amended in writing by or on  
13 behalf of a Holder of such Claim, or (b) such later date as may be fixed in accordance  
14 with the terms of the Plan.

15       17. Claims Agent: BMC Group, Inc., the Debtors’ court-appointed claims,  
16 noticing, and balloting agent.

17       18. Claims Bar Date: July 10, 2024, the deadline for filing proofs of Claim in  
18 the Chapter 11 Cases by non-Governmental Units, and March 27, 2024 for  
19 Governmental Units.

20       19. Class: A class of Claims or Equity Interests as defined in Article II of this  
21 Plan.

22       20. Class A iCap Trust Interests: The iCap Trust Interests to be distributed to  
23 the Holders of Allowed Investor Class A Claims and Allowed General Unsecured Class  
A Claims under the Plan.

24       21. Class B iCap Trust Interests: The iCap Trust Interests to be distributed to  
the Holders of Allowed Investor Class B Claims and Allowed General Unsecured Class  
B Claims under the Plan.

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1           22. Collateral: Any Estate asset that is subject to a Lien to secure the payment  
2 or performance of an Allowed Claim, which Lien is perfected and not subject to  
3 avoidance under the Bankruptcy Code or otherwise invalid or unenforceable under the  
Bankruptcy Code or applicable nonbankruptcy law.

4           23. Collateral Source Recoveries: Any recoveries from other sources (other  
5 than those pursuant to the Plan) that an Investor receives or has ever received on  
account of losses represented by its Investor Claim, including, without limitation,  
6 proceeds of insurance, litigation, or settlements.

7           24. Confirmation: The entry of the Confirmation Order by the Bankruptcy  
Court.

9           25. Confirmation Hearing: The hearing or hearings held by the Bankruptcy  
Court to consider confirmation of the Plan as required by Bankruptcy Code section  
10 1128(a).

11           26. Confirmation Order: The order of the Bankruptcy Court confirming the  
Plan pursuant to Bankruptcy Code section 1129.

13           27. Contingent Claim: Any Claim that is Scheduled or Filed as contingent.

14           28. Contributed Claims: All Causes of Action that a Creditor has against any  
Person that is not a Released Party and that are related in any way to the Debtors, their  
15 predecessors, their respective affiliates, or any Excluded Parties, excluding any  
Individual Investor-Specific Claims.

17           29. Contributing Claimants: The Creditors that elect on their Ballots to  
contribute Contributed Claims to the iCap Trust.

19           30. Contributing Claimants Enhancement Multiplier: The Claim of a  
Contributing Claimant shall be multiplied by 1.10.

21           31. Creditor: A “creditor” within the meaning of Bankruptcy Code  
section 101(10).

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1           32. CRO: Lance Miller solely in his capacity as the Chief Restructuring  
2 Officer of the Debtors.

3           33. D&O Insurance: All primary and excess insurance policies that provide  
4 coverage for the Debtors' former and current directors and officers, including any "tail"  
or "runoff" coverage for such policies.

5           34. Debtor or Debtors: Individually and collectively, iCap Enterprises, Inc.,  
6 and each of the entities listed in footnote 1 on page 1 of this Plan.

7           35. DIP Parties: The banks and other financial institutions party to the  
8 Supplemental DIP Credit Agreement from time to time, in their capacities as lenders  
thereunder.

9           36. Disclosure Statement: That certain disclosure statement relating to the  
10 Plan, including all referenced exhibits and schedules, as approved by the Bankruptcy  
11 Court pursuant to Bankruptcy Code section 1125, as it subsequently may be amended,  
modified, or supplemented by the Plan Proponents.

12           37. Disputed Claim: With respect to a Scheduled Claim, a Claim that (a) was  
13 listed in a Debtor's Schedules as "disputed," and that has not subsequently been  
14 Allowed or (b) is the subject of a timely Filed objection that has not been resolved.  
With respect to a Filed Claim, a Claim that is the subject of a timely Filed objection  
15 that has not been resolved.

16           38. Distribution: Any payment or transfer of consideration made pursuant to  
the Plan or the iCap Trust Agreement.

17           39. Distribution Agent: (i) The persons or entities serving as the iCap  
18 Trustees, but solely in their separate capacity as distribution agent under the Plan with  
19 respect to Distributions to Holders of Allowed Administrative Expense Claims, Priority  
20 Tax Claims, and Claims in Classes 1 and 2 on account of such Allowed Claims, or (ii)  
any party designated by the iCap Trustees to serve in such capacity.

21           40. Distribution Date: The date on which the iCap Trustees determine, in their  
22 sole discretion, to make a Distribution.

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1           41. Distribution Record Date: The Effective Date.

2           42. Distribution Reserve: One or more reserves related to Contingent Claims,  
3 Disputed Claims, or Unliquidated Claims established under the Plan for iCap Trust  
4 Interests distributable under the Plan with respect to such Claims and amounts payable  
5 under the Plan with respect to such Claims or on account of such reserved iCap Trust  
6 Interests.

7           43. Document Destruction Notice Parties: As defined in Article X.M of the  
8 Plan.

9           44. Effective Date: The first Business Day upon which all provisions, terms,  
10 and conditions to the Effective Date set forth in Article IX have been satisfied or  
11 waived pursuant to the terms set forth therein.

12           45. Equity Interest: An equity interest in the Debtor.

13           46. Estate Assets: Any and all right, title, and interest of the Debtors and the  
14 Estates in and to property of whatever type or nature, including, but not limited to, all  
15 Avoidance Actions and Causes of Action as of the Effective Date, and any assets  
16 contributed to or recovered by or for the iCap Trust on or after the Effective Date,  
17 unless such interest is later disclaimed by the iCap Trustees after consultation with the  
18 iCap Trust Supervisory Board.

19           47. Estates: The Estates created for the Debtors pursuant to Bankruptcy Code  
20 section 541(a).

21           48. Excluded Debtors: VH 1121 14th LLC and VH Willows Townhomes,  
22 LLC.

23           49. Excluded Parties: Any prepetition insider of any of the Debtors, any non-  
24 debtor affiliates of the Debtors or insider of any such non-debtor affiliates, any  
25 prepetition employee of any of the Debtors involved in any way in the prepetition  
26 marketing or sale of any products offered by any of the Debtors, and any other Person  
27 (including any “broker,” salesperson, consultant, affiliated entity, or professional)  
28 involved in any way in the prepetition marketing or sale of any products offered by any

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1 of the Debtors. For the avoidance of doubt, Excluded Parties shall not include any  
2 consultant retained or engaged by the Debtors during the Chapter 11 Cases except for  
3 Christopher Christensen and Jim Christensen.

4       50. Exculpated Parties: The Debtors; the Unsecured Creditors Committee and  
5 its current and former members (in their capacities as such); the CRO; and the  
6 preceding's respective Related Parties, *provided, however*, that the Exculpated Parties  
7 shall not include any Excluded Party.

8       51. Exit Financing: Financing comprised of amounts loaned pursuant to (a) the  
9 First Lien Exit Loan Facility and (b) the Tritalent Exit Loan Facility to fund the iCap  
10 Trust Expenses, plus such amounts as necessary to make payments required to be made in  
11 connection with the Plan . The material terms of the Exit Financing will be included in  
12 the Plan Supplement.

13       52. Federal Judgment Rate: The rate of interest in effect as of the Effective  
14 Date provided for under 28 U.S.C. § 1961 for postjudgment interest in federal court  
15 proceedings.

16       53. File, Filed, or Filing: Duly and properly filed with the Bankruptcy Court  
17 and reflected on the docket of the Chapter 11 Cases, except with respect to proofs of  
18 Claim that must be filed with the Claims Agent, in which case “File” or “Filed” means  
19 duly and properly filed with the Claims Agent and reflected on the official claims  
20 register maintained by the Claims Agent.

21       54. Final Order: An order or judgment entered by the Bankruptcy Court or  
22 other court of competent jurisdiction: (a) that has not been reversed, stayed, modified,  
23 amended, or revoked, and as to which (i) any right to appeal or seek certiorari, review,  
certiorari, review, reargument, stay, or rehearing has been waived or (ii) the time to appeal or seek  
certiorari, review, reargument, stay, or rehearing has expired and no appeal or petition  
for certiorari, review, reargument, stay, or rehearing is pending or (b) as to which an  
appeal has been taken or petition for certiorari, review, reargument, stay, or rehearing  
has been filed and (i) such appeal or petition for certiorari, review, reargument, stay, or  
rehearing has been resolved by the highest court to which the order or judgment was  
appealed or from which certiorari, review, reargument, stay, or rehearing was sought  
and (ii) the time to appeal further or seek certiorari, further review, reargument, stay, or

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1 rehearing has expired and no such further appeal or petition for certiorari, further  
2 review, reargument, stay, or rehearing is pending; *provided, however*, that no order or  
3 judgment shall fail to be a “Final Order” solely because of the possibility that a motion  
4 pursuant to Bankruptcy Code sections 502(j) or 1144, rules 59 or 60 of the Federal  
Rules of Civil Procedure, or Bankruptcy Rules 9023 and 9024 may be filed with  
respect to such order or judgment.

5       55. First Lien Exit Loan Facility: That certain senior term loan in the  
6 aggregate principal amount of five million and 00/100 Dollars (\$5,000,000.00)  
7 provided by iCap DIP Finance Group LLC. The material terms of the First Lien Exit  
Loan Facility will be included in the Plan Supplement.

8       56. General Unsecured Claim: A Claim that is (a) based upon (i) a proof of  
9 Claim executed and filed in accordance with Bankruptcy Rule 3003(c) prior to the  
Claims Bar Date, or (ii) the listing of the Claim in the Debtors’ Schedules as other than  
10 disputed, contingent, or unliquidated, and (b) not a Secured Claim, Administrative  
Expense Claim, Priority Tax Claim, Supplemental DIP Claim, Priority Claim,  
11 Subordinated Claim, or Investor Claim.

12       57. General Unsecured Class A Claim: A General Unsecured Claim equal to  
13 the Outstanding Principal Amount for each particular Holder of a General Unsecured  
Claim.

14       58. General Unsecured Class B Claim: A General Unsecured Claim comprised  
15 of any Claim for prepetition interest, which Claim shall be subordinated to Investor  
16 Class A Claims and General Unsecured Class A Claims under the Plan (but *pari passu*  
with Investor Class B Claims and senior in priority to Subordinated Claims). Such  
17 Claim shall equal the accrued prepetition interest at the applicable contract rate. The  
18 calculation and allowance of General Unsecured Class B Claims shall be determined in  
accordance with the procedures established in the reasonable judgment of the iCap  
19 Trustees.

20       59. Governmental Unit: A “governmental unit” as defined in Bankruptcy Code  
section 101(27).

21       60. Holder: A holder of a Claim or Equity Interest as the case may be.

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1           61. iCap Trust: A trust established on the Effective Date for the benefit of the  
2 iCap Trust Beneficiaries in accordance with the terms of the Plan and the iCap Trust  
3 Agreement.

4           62. iCap Trust Actions: Collectively, all Avoidance Actions and Causes of  
5 Action held by the Debtors or the Estates and any Causes of Action that are contributed  
6 to the iCap Trust as Contributed Claims, in each case as against any Person that is not a  
7 Released Party.

8           63. iCap Trust Agreement: The agreement substantially in the form Filed in  
9 the Plan Supplement and reasonably acceptable to the Debtors and the Unsecured  
10 Creditors' Committee establishing and delineating the terms and conditions of the iCap  
11 Trust, including the rights and duties of the iCap Trustees and the iCap Trust  
12 Supervisory Board.

13           64. iCap Trust Assets: Collectively, (a) the iCap Trust Actions; (b) the iCap  
14 Trust Funding; (c) 100% of the ownership interests in the Debtors (and all assets,  
15 proceeds, and distributions from such entities); (d) Available Cash as of the Effective  
16 Date and Available Cash that is possessed by or turned over to the iCap Trust after the  
17 Effective Date; and (e) other assets that may be transferred or otherwise provided,  
18 directly or indirectly, to or for the benefit of the Debtors (after the Petition Date but  
19 before the Effective Date) or the iCap Trust (on or after the Effective Date) by any  
20 Person.

21           65. iCap Trust Beneficiary: Each Holder of an iCap Trust Interest.

22           66. iCap Trust Expenses: Any and all reasonable fees, costs, and expenses  
23 incurred by the iCap Trustees in managing and operating the iCap Trust not  
inconsistent with the Plan or the iCap Trust Agreement, including the maintenance or  
disposition of the iCap Trust Assets (including iCap Trustee fees, indemnity reserves,  
attorneys' fees, the fees of professionals, and other Persons retained by the iCap  
Trustees, personnel-related expenses, and any taxes imposed on the iCap Trust, in  
respect of the iCap Trust Assets), and any other expenses incurred or otherwise payable  
in accordance with the iCap Trust Agreement.

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1           67. iCap Trust Funding: Any Cash or reserves existing as of the Effective  
2 Date, and all Cash required (a) to make payments in accordance with the Plan to  
3 Administrative Expense Claims, Priority Tax Claims, Priority Claims, and Secured  
4 Claims; or (b) to fund any other unfunded post-Confirmation reserve requirements of  
the iCap Trust in connection with the Plan, any agreements, or any Bankruptcy Court  
orders.

5           68. iCap Trust Interests: Collectively, the Class A iCap Trust Interests and the  
6 Class B iCap Trust Interests. All iCap Trust Interests will be evidenced by entry into  
the Distribution Agent's books and records, without a separate certificate of interest.  
7

8           69. iCap Trust Interests Waterfall: On each Distribution Date, the iCap Trust  
shall distribute its Available Cash as follows:  
9

10           a. The iCap Trust shall distribute Available Cash to each Holder of a  
11 Class A iCap Trust Interest on a Pro Rata basis (based on such Holder's number of  
12 Class A iCap Trust Interests), after accounting for any Disputed Claims, until all  
Allowed Investor Class A Claims and Allowed General Unsecured Class A Claims  
have been paid in full without post-petition or post-Confirmation interest;  
13

14           b. Thereafter, the iCap Trust shall distribute Available Cash to each  
15 Holder of a Class B iCap Trust Interest on a Pro Rata basis (based on such Holder's  
16 number of Class B iCap Trust Interests), after accounting for any Disputed Claims,  
until all Allowed Investor Class B Claims and Allowed General Unsecured Class B  
Claims have been paid in full without post-petition or post-Confirmation interest.  
17

18           70. iCap Trust Supervisory Board: A three-person supervisory board for the  
iCap Trust, whose initial members shall be Lilian Tan, Thomas Temple, and Jay  
Kornfeld of the firm Bush Kornfeld LLP. In the event of a vacancy or resignation of a  
board member, such board seat will remain vacant.  
19

20           71. iCap Trustees: Lance Miller and Seth Freeman; and any successor  
appointed pursuant to the terms of the iCap Trust Agreement.  
21

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1           72. Insider: Any “insider,” as defined in Bankruptcy Code section 101(31),  
2 and with respect to a limited liability company, any director, officer, person in control,  
3 or relative of any of the foregoing.

4           73. Intercompany Claim: A Claim of one Debtor against another Debtor.

5           74. Intercompany Lien: Any lien securing or purporting to secure an  
6 Intercompany Claim.

7           75. Investor: A Person or entity that purchased an investment product  
8 (including any debentures, promissory notes, or other debt securities issued by the  
9 Debtors) or made an investment offered by any Debtor pursuant to an offering  
10 memorandum or private placement memorandum that was issued by a Debtor.

11           76. Investor Avoidance Settlement: Any settlement between the iCap Trust  
12 and one or more Investors related to a potential or actual Avoidance Action against the  
13 Investors.

14           77. Investor Claims: Any and all Claims of an Investor against any Debtor,  
15 which shall be composed of (i) an Investor Class A Claim and (ii) an Investor Class B  
16 Claim.

17           78. Investor Claims Special Provisions: As defined in Article III.C.1 of the  
18 Plan.

19           79. Investor Class A Claim: An Investor Claim for restitution of an Investor to  
20 be treated *pari passu* with General Unsecured Class A Claims. Such Claim shall equal  
21 the total Outstanding Principal Amount for each particular Investor. For avoidance of  
22 doubt, an Allowed Investor Class A Claim shall be reduced dollar for dollar on account  
23 of any Collateral Source Recoveries the Investor receives on account of the losses  
represented by its Investor Claim, and if such Allowed Investor Class A Claim is  
reduced to zero, the Investor’s Allowed Investor Class B Claim will be reduced dollar  
for dollar on account of any additional Collateral Source Recoveries that may be  
received by the Investor.

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1           80. Investor Class B Claim: An Investor Claim comprised of any Claim by the  
2 Investor for prepetition interest in connection with such Investor's principal investment  
3 in a Debtor, which Claim shall be subordinated to Investor Class A Claims and General  
4 Unsecured Class A Claims under the Plan (but *pari passu* with General Unsecured  
5 Class B Claims and senior in priority to Subordinated Claims). Such Claim shall equal  
6 the accrued interest from the time of the Investor's principal investment to the Petition  
Date at a rate of seven percent (7%), compounded annually. The calculation and  
allowance of Investor Class B Claims shall be determined in accordance with the  
procedures established in the reasonable judgment of the iCap Trustees.

7           81. Lien: Has the meaning ascribed in Bankruptcy Code section 101(37),  
8 including any lien, security interest, pledge, title retention agreement, encumbrance,  
9 leasehold, charge, mortgage, deed of trust, assignment of rents, assignment or  
hypothecation to secure payment of a debt or performance of an obligation, other than,  
10 in the case of securities and any other equity ownership interests, any restrictions  
imposed by applicable United States or foreign securities laws.

11           82. Net Prepetition Investor Recovery: With respect to a specific Investor, (a)  
12 the total Cash value remitted to the Investor from the Ponzi Start Date until the Petition  
Date (whether the payment was considered a return on the investment, interest, a  
13 referral fee, or a repayment of principal), minus (b) the total Cash value invested  
prepetition as principal by the Investor, (provided that the value of (a) is greater than  
14 the value of (b)), capped by the amount of total Cash value remitted to the Investor.

15           83. Notes: Any and all investments, interests, or other rights with respect to  
16 any of the Debtors that were referred to, marketed, or sold as "notes," "loans," or  
"mortgages."

17           84. Notice and Hearing: Proceedings as contemplated under Bankruptcy Code  
18 section 102(1).

19           85. Outstanding Principal Amount: An amount equal to the aggregate  
20 principal balance outstanding as of the Petition Date, excluding any purportedly  
21 accrued prepetition interest.

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1       86. Person: Any person or organization created or recognized by law,  
2 including any association, company, cooperative, corporation, entity, estate, fund,  
3 individual, joint stock company, joint venture, limited liability company, partnership,  
4 trust, trustee, unincorporated organization, government or any political subdivision  
thereof, or any other entity or organization of whatever nature.

5       87. Petition Date: September 29, 2023, the date upon which the lead Debtor  
commenced its Chapter 11 Cases.

6       88. Plan: This Joint Plan of Liquidation, all exhibits to the Plan, and the Plan  
7 Supplement, as such may be amended from time to time in the reasonable discretion of  
the Plan Proponents.

8       89. Plan Proponents: The Debtors and the Unsecured Creditors' Committee.

9       90. Plan Supplement: The supplementary documents regarding the  
10 implementation and effectuation of the Plan, to be filed on or before the date that is  
11 eleven (11) calendar days prior to the Voting Deadline, as such documents may be  
12 amended and supplemented from time to time prior to the Confirmation Hearing in the  
13 reasonable discretion of the Plan Proponents.

14       91. Ponzi Finding: A finding by the Bankruptcy Court that the Debtors'  
15 prepetition operations constituted a Ponzi scheme, as set forth more fully in Article  
III.C of the Plan.

16       92. Ponzi Start Date: No later than October 2018.

17       93. Priority Claim: A Claim entitled to priority under Bankruptcy Code  
18 section 507(a), other than an Administrative Expense Claim or a Priority Tax Claim.

19       94. Priority Tax Claims: Allowed Claims of Governmental Units for the  
20 principal amount of a tax within the meaning of Bankruptcy Code section 507(a)(8),  
21 and statutory interest accruing thereon prior to the Petition Date.

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23       MODIFIED SECOND AMENDED  
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1           95. Professional Person: A person, including a trustee (if one is appointed),  
2 retained or to be compensated pursuant to Bankruptcy Code sections 326, 327, 328,  
3 330, and/or 1103.

4           96. Pro Rata: Proportionately so that the ratio of (a) the amount of  
5 consideration distributed on account of a particular Allowed Claim or iCap Trust  
6 Interest to (b) the amount or number of that Allowed Claim or iCap Trust Interest, is  
7 the same as the ratio of (x) the amount of consideration available for Distribution on  
8 account of, as applicable, all Allowed Claims in the Class in which the particular  
9 Allowed Claim is included or all applicable iCap Trust Interests to (y) as applicable, the  
10 amount of all Allowed Claims in that Class or the number of applicable iCap Trust  
11 Interests.

12           97. Related Parties: Collectively, all of the respective accountants, agents,  
13 assigns, attorneys, bankers, consultants, directors, employees, executors, financial  
14 advisors, investment bankers, managers, members, officers, partners, predecessors,  
15 principals, Professional Persons, representatives, and successors of the referenced  
16 Person; *provided, however*, that the Debtors' Related Parties will be limited to the  
17 following Persons: the directors, officers, attorneys, accountants, consultants,  
18 professionals, and employees who (a) are employed by the Debtors on the Effective  
19 Date or (b) whose employment was approved by the Bankruptcy Court.

20           98. Released Parties: The Debtors; the Unsecured Creditors' Committee and  
21 its current and former members (in their capacities as such); the CRO; the DIP Parties;  
22 and the preceding's respective Related Parties, *provided, however*, that the Released  
23 Parties shall not include any Excluded Party.

24           99. Releasing Parties: The Debtors; the Estates; and any Person exercising or  
25 seeking to exercise any rights of the Estates (but solely in that capacity), including the  
26 Unsecured Creditors' Committee (but not its current or former individual members),  
27 the iCap Trustees, and any other successor to the Debtors or any other estate  
28 representative that is or could be appointed or selected pursuant to Bankruptcy Code  
29 section 1123(b)(3) or otherwise.

30           100. Scheduled: As set forth in the Schedules.

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1           101. Schedules: The schedules of assets, liabilities, and executory contracts  
2 and the statement of financial affairs filed on behalf of each Debtor pursuant to  
3 Bankruptcy Code section 521, and in accordance with the Bankruptcy Rules, as each  
has been, or may be, amended and supplemented from time to time.

4           102. SEC: The United States Securities and Exchange Commission.

5           103. Secured Claim: A Claim that is a secured Claim against a Debtor  
6 determined in accordance with Bankruptcy Code section 506(a).

7           104. Securities Act: The Securities Act of 1933, as amended.

8           105. Secured Claims Reserves: Individual reserves of Cash in respect of each  
9 Holder of a Secured Claim (including such Secured Claims that are Contingent Claims,  
10 Disputed Claims, or Unliquidated Claims), comprised of the proceeds of the Collateral  
11 securing such Secured Claim, to be established by the iCap Trustees on or as soon as  
12 reasonably practicable after the Effective Date, out of which the Distribution Agent will  
make Distributions to the Holders of Secured Claims (if and to the extent Allowed)  
from the applicable reserve for such Holder in accordance with the Plan.

13           106. Senior Claims Reserve: One or more reserves of Cash in respect of, as  
14 applicable, Administrative Expense Claims, Priority Tax Claims, and Priority Claims  
15 (including such Claims that are Contingent Claims, Disputed Claims, or Unliquidated  
16 Claims), in amounts to be established by the iCap Trustees on or as soon as reasonably  
17 practicable after the Effective Date, out of which (i) the Distribution Agent will make  
18 Distributions to the Holders of the foregoing Claims (if and to the extent Allowed) in  
19 accordance with the Plan, and (ii) the iCap Trustees and their agents, including the  
20 Distribution Agent (if not the iCap Trustees), will be reimbursed from such monies for  
21 reasonable costs and expenses incurred by said parties (including fees and costs to  
22 litigate and otherwise resolve Contingent Claims, Disputed Claims, or Unliquidated  
23 Claims, and administer and make Distributions out of the Senior Claims Reserve and  
the Secured Claims Reserves).

20           107. Subordinated Claim: Any Claim that is subordinated to General Unsecured  
21 Claims pursuant to Bankruptcy Code section 510, a Final Order, or by consent of the  
22 Creditor holding such Claim, but not any Investor Class B Claims.

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1           108. Supplemental DIP Claim: Any Claim arising under or relating to the  
2 Supplemental DIP Credit Agreement.

3           109. Supplemental DIP Credit Agreement: That certain *Debtor-In-Possession*  
4 *Loan and Security Agreement* dated as of July 18, 2024, by and among, the Debtors,  
5 Socotra REIT I, LLC; WE Alliance Secured Income Fund, LLC; Jason Yelowitz, in his  
6 capacity as trustee of the Jason Yelowitz 2006 Trust Dated March 31, 2006; and Keith  
7 Holdings, LLC; as the same may have been further amended, modified, ratified,  
8 extended, renewed, restated, or replaced, and any other agreements and documents  
9 related thereto.

10          110. Tritalent: Tritalent Funding Group and Halton Co.

11          111. Tritalent Exit Loan Facility: That certain junior term loan in the aggregate  
12 principal amount of five hundred thousand and 00/100 Dollars (\$500,000.00) provided  
13 by Tritalent. The material terms of the Tritalent Exit Loan Facility will be included in  
14 the Plan Supplement.

15          112. Unliquidated Claim: Any Claim that is Scheduled as unliquidated or Filed  
16 in an unliquidated amount.

17          113. Unsecured Creditors' Committee: The official committee of unsecured  
18 creditors, as contemplated under Bankruptcy Code section 1102.

19          114. Voting Deadline: The deadline by which all Ballots to accept or reject the  
20 Plan must be received in order to be counted.

21          **B. Rules of Interpretation**

22          The rules of construction set forth in Bankruptcy Code section 102 shall apply to  
23 the Plan. For purposes of the Plan and unless otherwise specified herein: (i) each term,  
whether stated in the singular or the plural, shall include, in the appropriate context,  
both the singular and the plural; (ii) each pronoun stated in the masculine, feminine, or  
neuter gender shall include, in the appropriate context, the masculine, feminine, and the  
neuter gender; (iii) the words "herein," "hereof," and "hereto" refer to the Plan in its  
entirety rather than to a particular portion of the Plan; (iv) the words "include" and

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1       “including,” and variations thereof, shall not be deemed to be terms of limitation, and  
2       shall be deemed to be followed by the words “without limitation;” (v) all references to  
3       articles or Articles are references to the Articles hereof; (vi) all captions and headings  
4       are inserted for convenience of reference only and are not intended to be a part of, or to  
5       affect the interpretation of, the Plan; (vii) any reference to a Person as a Holder of a  
6       Claim or Equity Interest includes that Person’s successors and assigns; (viii) any  
7       reference to an existing document, schedule, or exhibit, whether or not filed, having  
8       been filed, or to be filed, shall mean that document, schedule or exhibit, as it may  
9       thereafter be amended, restated, modified, or supplemented; (ix) any reference to an  
10      event occurring on a specified date, including on the Effective Date, shall mean that the  
11      event will occur on that date or as soon thereafter as reasonably practicable; (x) any  
12      reference to a contract, lease, instrument, release, indenture, or other agreement or  
13      document being in a particular form or on particular terms and conditions means that  
14      the referenced document shall be substantially in that form or substantially on those  
15      terms and conditions except as specifically provided herein; (xi) all references to  
16      statutes, regulations, orders, rules of courts, and the like shall mean as amended from  
17      time to time and as applicable to the Chapter 11 Cases; and (xii) subject to the  
18      provisions of any contract, certificate of incorporation, bylaw, instrument, release, or  
19      other agreement or document entered into in connection with the Plan, the rights and  
20      obligations arising pursuant to the Plan shall be governed by, and construed and  
21      enforced in accordance with, the applicable federal law, including the Bankruptcy Code  
22      and Bankruptcy Rules.

## ARTICLE II. CLASSIFICATION OF CLAIMS AND INTERESTS

All Claims against the Debtors are classified as set forth below. A Claim is in a particular Class only to the extent it qualifies within the definition of such Class and is in a different Class to the extent it qualifies within the definition of such different Class.

- Class 1: Priority Claims
- Class 2: Secured Claims
- Class 3: Investor Claims
- Class 4: General Unsecured Claims
- Class 5: Subordinated Claims
- Class 6: Equity Interests

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**ARTICLE III.**  
**PROVISIONS FOR SATISFYING CLAIMS AND SPECIFYING**  
**TREATMENT OF EACH CLASS UNDER THE PLAN**

The treatment of all Allowed Claims and Allowed Equity Interests shall be as follows:

#### **A. Unclassified Claims**

1. Administrative Expense Claims. Administrative Expense Claims incurred in the ordinary course of the Debtors' business following the Petition Date (including fees owed to the CRO and/or either of Paladin Management Group, LLC and Pivot Management Group, LLC) shall be paid in the ordinary course of business in accordance with the terms and conditions of the particular agreements governing such obligations (as such terms were modified by any orders approving such agreements), or on such other terms as the Holder of such Claim and the Debtors (prior to the Effective Date) or the iCap Trustees (from the Effective Date forward) shall agree to in writing. All other Administrative Expense Claims, including Claims of Professional Persons, shall be paid on the later of the Effective Date or the date each such Claim becomes an Allowed Claim or on such other terms as the Holder of such Claim and the Debtors (prior to the Effective Date) or the iCap Trustees (from the Effective Date forward) shall agree to in writing. Claims arising under 28 U.S.C. § 1930 shall be paid as required by that statute.

a. Administrative Expense Claims Bar Date. Administrative expense requests asserting Administrative Expense Claims arising from the Petition Date through and including the Effective Date, excluding (a) Claims of Professional Persons in the Chapter 11 Cases and (b) claims arising in the ordinary course of business, must be filed no later than 30 days after the notice of the Effective Date is filed with the Bankruptcy Court or such later date as may be established by order of the Bankruptcy Court.

b. Final Fee Applications. All final requests for compensation or reimbursement of Professional Persons retained in these Chapter 11 Cases for services performed and expenses incurred prior to the Effective Date shall be filed and served on:

(a) the iCap Trustees, (i) Pivot Management Group, LLC, 1230 Rosecrans Ave.,

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Suite 530, Manhattan Beach, CA 90266 (Attn: Lance Miller  
(Lance.miller@pivotgrp.com)) and (ii) B. Riley Advisory Services, 19800  
MacArthur Boulevard, Suite 820, Irvine, CA 92612 (Attn: Seth Freeman  
(SFreeman@brileyfin.com)); (b) counsel to the Debtors, O'Melveny & Myers  
LLP (i) 400 South Hope Street, Suite 1900, Los Angeles, CA 90071 (Attn: Julian  
Gurule (jgurule@omm.com)) and (ii) 1301 Avenue of the Americas, Suite 1700,  
New York, NY 10019 (Attn: Diana Perez (dperez@omm.com)); (c) counsel to  
the Unsecured Creditors' Committee, (i) Bush Kornfeld LLP, 601 Union Street,  
Suite 5000, Seattle, WA 98101 (Attn: Armand J. Kornfeld  
(jkornfeld@bskd.com) and Aimee S. Willig (awillig@bskd.com)) and (ii) Corr  
Cronin LLP, 1015 Second Ave., Floor 10, Seattle, WA 98104 (Attn: John T.  
Bender (jbender@corrchronin.com)); (d) the Office of the United States Trustee,  
United States Department of Justice, 920 West Riverside Avenue, Room 593,  
Spokane, WA 99201 (Attn: Gary W. Dyer (Gary.W.Dyer@usdoj.gov)); and (e)  
such other Persons who are designated by the Bankruptcy Rules, the  
Confirmation Order, or other order of the Bankruptcy Court, by no later than  
sixty (60) days after the Effective Date, unless otherwise agreed by the Debtors  
or the iCap Trustees, as applicable. Objections to any Claims of Professional  
Fees must be filed with the Bankruptcy Court and served on the iCap Trustees  
and the applicable Professional Person no later than fourteen (14) days after  
service of such applicable final fee application, unless otherwise ordered by the  
Bankruptcy Court. After Notice and Hearing in accordance with the procedures  
established by the Bankruptcy Code and any prior orders of the Bankruptcy  
Court in the Chapter 11 Cases, the Allowed amounts of such Claims shall be  
determined by the Bankruptcy Court and, once approved by the Bankruptcy  
Court, shall be promptly paid in Cash.

2. Priority Tax Claims. Allowed Priority Tax Claims shall be paid, at the iCap Trust's option, as follows: (a) Cash equal to the unpaid portion of such Allowed Priority Tax Claim on the later of the Effective Date and thirty (30) calendar days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable nonbankruptcy law as of the calendar month in which the Effective Date occurs (*provided* that such election shall be without prejudice to the right to prepay any such Allowed Priority Tax Claim in full or in part without penalty);

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1 or (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim  
2 and the iCap Trust shall have agreed upon in writing.

3       3. Supplemental DIP Claims. On the Effective Date, (a) all obligations of the  
4 Debtors under the Supplemental DIP Credit Agreement shall be assumed by the iCap  
5 Trust; (b) all Liens and security interests granted to secure the Debtors' obligations  
6 under the Supplemental DIP Credit Agreement shall remain in place and shall be  
7 otherwise subject to the terms and conditions of the Supplemental DIP Credit  
Agreement and any related subordination terms; and (c) the legal, equitable, and  
contractual rights of the parties under the Supplemental DIP Credit Agreement shall be  
unaltered by the Plan.

8       **B. Classified Claims and Interests**

9       **1. Class 1: Priority Claims**

10      Class 1 consists of Priority Claims. Class 1 is unimpaired and deemed to accept  
11 the Plan.

12      On the later of (i) the Effective Date and (ii) thirty (30) calendar days following  
13 the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of  
14 such Allowed Priority Claim shall receive, in full satisfaction, settlement, and release of  
and in exchange for such Allowed Priority Claim, either (a) Cash from the iCap Trust  
equal to the unpaid portion of such Allowed Priority Claim or (b) such other less  
favorable treatment from the iCap Trust to which such Holder and the iCap Trust shall  
have agreed upon in writing.

17       **2. Class 2: Secured Claims**

18      Class 2 consists of the following sub-classes of Secured Claims:

19       a. **Class 2A: UW 17th Ave, LLC Secured Claims**

- 20           (i) Class 2A.1 Studio 19 Architects Secured Claim
- 21           (ii) Class 2A.2 UW 17th Davido Consulting Group
- 22           (iii) Class 2A.3 Dhillon Secured Claim

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- 1           b. **Class 2B: VH 1121 14th LLC Secured Claims**  
2           (i) Class 2B.1 14<sup>th</sup> Wilmington Savings Fund Secured Claim
- 3           c. **Class 2C: VH Willows Townhomes, LLC Secured Claims**  
4           (i) Class 2C.1 Willows Wilmington Savings Secured Claim
- 5           d. **Class 2D: VH Senior Care, LLC Secured Claims**  
6           (i) Class 2D.1 Redmond Funding Group Secured Claim
- 7           e. **Class 2E: 725 Broadway, LLC Secured Claims**  
8           (i) Class 2E.1 Christopher Jones Architects Secured Claim  
9           (ii) Class 2E.2 Broadway Davido Consulting Secured Claim  
10           (iii) Class 2E.3 Malsam Tsang Engineering Secured Claim  
11           (iv) Class 2E.4 Broadway Davido Consulting Secured Claim  
12           (v) Class 2E.5 Broadway Oak Hills Construction LLC
- 13           f. **Class 2F: Senza Kenmore, LLC Secured Claims**  
14           (i) Class 2F.1 Van Hoof Construction Secured Claim  
15           (ii) Class 2F.2 T.S. Dance Construction Secured Claim
- 16           g. **Class 2G: iCap Campbell Way, LLC Secured Claims**  
17           (i) Class 2G.1 Campbell Davido Consulting Secured Claim  
18           (ii) Class 2G.2 Deed of Trust of Pacific NW Opportunity & Income Fund,  
19           LLC
- 20           h. **Class 2H: VH Pioneer Village, LLC Secured Claims**  
21           (i) Class 2H.1 Tritalent Funding Group Secured Claim
- 22           i. **Class 2I: CS2 Real Estate Development Secured Claims**  
23           (i) Class 2I.1 BRMK Management Secured Claim  
24           (ii) Class 2I.2 United Rentals Secured Claim  
25           (iii) Class 2I.3 Sunbelt Rentals Secured Claim  
26           (iv) Class 2I.4 CS2 Oak Hills Construction Secured Claim  
27           (v) Class 2I.5 Rexel USA, Inc. dba Platt Electric Supply Claim
- 28           j. **Class 2J: Secured Real Property Tax Claims**

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1           Class 2 is unimpaired and deemed to accept the Plan.

2           Except as explicitly provided for in the Plan, the legal, equitable, and contractual  
3 rights of Holders of Allowed Secured Claims are unaltered by the Plan, and,  
4 notwithstanding substantive consolidation of the Debtors and vesting of the iCap Trust  
5 Assets in the iCap Trust, the Liens of the Holders of Allowed Secured Claims will  
6 continue to attach to their respective Collateral, *provided* that all such Claims shall  
7 remain subject to any and all defenses, counterclaims, and setoff or recoupment rights  
8 with respect thereto. On the later of (i) the Effective Date and (ii) thirty (30) calendar  
9 days following the date on which a Secured Claim becomes an Allowed Secured Claim,  
10 the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement,  
11 and release of and in exchange for such Allowed Secured Claim, at the option of the  
12 Debtors or the iCap Trust, either (a) the net proceeds from the sale of the Collateral  
13 securing such Allowed Secured Claim; *provided, however,* that if the sale of the  
14 Collateral securing an Allowed Secured Claim closes after the occurrence of the  
Effective Date, the payment of the net proceeds shall be delivered to the Holder of the  
Allowed Secured Claim within thirty (30) calendar days of the closing of such sale, (b)  
the surrender of the Collateral securing such Allowed Secured Claim, or (c) such other  
less favorable treatment from the iCap Trust to which such Holder and the iCap Trust  
shall have agreed upon in writing. Pending allowance of a Secured Claim, the Debtors  
or the iCap Trust, as applicable, will segregate the proceeds from the sale of the  
Collateral securing such Secured Claim in the individual Secured Claims Reserve for  
the Holder of such Claim.

15           **3. Class 3: Investor Claims**

16           Class 3 consists of Investor Claims, as more particularly described below. Class  
17 3 is impaired under the Plan and entitled to vote on the Plan.

18           In full satisfaction, settlement, and release of and in exchange for such Claims,  
19 the Holders of Allowed Investor Claims will receive (i) on the later of the Effective  
20 Date and thirty (30) calendar days following the date on which such Investor Claim  
21 becomes an Allowed Investor Claim, one (1) Class A iCap Trust Interest for each dollar  
22 of Allowed Investor Class A Claims and one (1) Class B iCap Trust Interest for each  
23 dollar of Allowed Investor Class B Claims held by the applicable Investor (any  
resulting fractional iCap Trust Interests will be rounded to the nearest hundredth of

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1 such iCap Trust Interest), and (ii) the other consideration provided for in the Investor  
2 Claims Special Provisions set forth in Article III.C.1 of the Plan. All Distributions of  
3 Cash on account of the iCap Trust Interests will be made by the iCap Trust in  
accordance with the iCap Trust Interests Waterfall.

4 For clarity, the practical effect of the above is the following:

5 Class A iCap Trust Interests, which consist of Investors' principal balance owed  
6 on the Petition Date, will be paid through Distributions by the iCap Trust until fully  
7 satisfied. Once all of the Class A iCap Trust Interests are paid in full, then Distributions  
will be made to Class B iCap Trust Interests, which consist of Investors' accrued  
interest due as of the Petition Date.

9 As an example, if Investor X invested \$100,000 one year before the Petition Date  
with the Debtors, under the Plan, Investor X will receive (i) a \$100,000 Investor Class  
10 A Claim (*i.e.*, the original principal investment of \$100,000); and (ii) a \$7,000 Investor  
Class B Claim (representing 7% per annum interest on the \$100,000 investment).

12 The treatment of any and all Investor Claims under the Plan is not intended to  
and will not reduce, impair, satisfy, limit, or otherwise affect any rights that any  
13 Investor may have against any Person that is not a Released Party (including those  
rights that may be included in the Contributed Claims and contributed to the iCap Trust  
14 by making the Ballot election described below).

15 Each Holder of an Investor Claim may agree by electing on its Ballot to  
contribute its Contributed Claims to the iCap Trust. By electing such option on its  
16 Ballot the Investor agrees that, subject to the occurrence of the Effective Date and the  
formation of the iCap Trust, it will be deemed, without further action, (i) to have  
17 contributed its Contributed Claims to the iCap Trust and (ii) to have agreed to execute  
any documents reasonably requested to memorialize its contribution. The relative share  
18 of iCap Trust recoveries for any electing Investor will be enhanced by having the  
amounts that otherwise would be its Allowed Investor Class A Claim and its Allowed  
19 Investor Class B Claim each increased by the Contributing Claimants' Enhancement  
Investor Class B Claim each increased by the Contributing Claimants' Enhancement  
20 Multiplier – *i.e.*, **10%**.

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1

#### 4. Class 4: General Unsecured Claims

2

3 Class 4 consists of General Unsecured Claims, as more particularly described  
below. Class 4 is impaired under the Plan and entitled to vote on the Plan.

4

5 In full satisfaction, settlement, and release of and in exchange for such Claims,  
the Holders of Allowed General Unsecured Claims will receive on the later of the  
6 Effective Date and thirty (30) calendar days following the date on which such General  
7 Unsecured Claim becomes an Allowed General Unsecured Claim, one (1) Class A iCap  
8 Trust Interest for each dollar of Allowed General Unsecured Class A Claims and one  
9 (1) Class B iCap Trust Interest for each dollar of Allowed General Unsecured Class B  
Claims held by the applicable Holder (any resulting fractional iCap Trust Interests will  
be rounded to the nearest hundredth of such iCap Trust Interest). All Distributions of  
Cash on account of the iCap Trust Interests will be made by the iCap Trust in  
accordance with the iCap Trust Interests Waterfall.

10

#### 5. Class 5: Subordinated Claims

11

12 Class 5 consists of all Subordinated Claims. Class 5 is impaired under the Plan  
and deemed to reject the Plan.

13

14 The Holders of Allowed Subordinated Claims will retain a residual right to  
receive Available Cash that remains in the iCap Trust after the final administration of  
15 all iCap Trust Assets, and the complete satisfaction of all senior payment rights within  
the iCap Trust Interests Waterfall, including satisfaction of all Investor Class B Claims  
16 and General Unsecured Class B Claims. The Plan Proponents have decided not to  
solicit the votes of the Holders of any Subordinated Claims, and such Holders are  
17 therefore deemed to have rejected the Plan.

18

#### 6. Class 6: Equity Interests

19

20 Class 6 consists of all Equity Interests and purported Equity Interests in the  
Debtors. Class 6 is impaired under the Plan and deemed to reject the Plan.

21

22 On and after the Effective Date, (a) Holders of Equity Interests shall not be  
entitled to, and shall not receive or retain, any property or interest in property under the

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1 Plan on account of such Equity Interests and (b) the Equity Interests shall be deemed to  
2 be held by the iCap Trust under applicable non-bankruptcy law and the iCap Trustees  
3 shall be authorized to exercise all of the rights and powers of a sole member as  
provided by the Plan.

4 Any purported Equity Interests or Liens on Equity Interests held by an Investor  
5 in any Debtor will be considered void, cancelled, and of no further force and effect.  
These Claims will be regarded as Class 3 Investor Claims in accordance with the Plan,  
6 irrespective of any labels used by the Debtors and/or Investors prior to the Petition  
Date.

7 **C. Comprehensive Settlement of Claims and Controversies**

8 Pursuant to Bankruptcy Code sections 1123(a)(5), 1123(b)(3), and 1123(b)(6), as  
9 well as Bankruptcy Rule 9019, and in consideration for the Distributions and other  
10 benefits provided under the Plan, the provisions of the Plan will constitute a good faith  
compromise and settlement of all claims and controversies relating to the rights that a  
11 Holder of a Claim or an Equity Interest may have against any Debtor with respect to  
any Claim, Equity Interest, or any Distribution on account thereof, as well as of all  
12 potential Intercompany Claims, Intercompany Liens, and Causes of Action against any  
Debtor. The entry of the Confirmation Order will constitute the Bankruptcy Court's  
13 approval, as of the Effective Date, of the compromise or settlement of all such claims  
or controversies and the Bankruptcy Court's finding that all such compromises or  
14 settlements are (i) in the best interest of the Debtors, the Estates, and their respective  
15 property and stakeholders; and (ii) fair, equitable, and reasonable.

16 The Plan Proponents will also seek findings in the Confirmation Order  
17 (the "**Ponzi Findings**") that (i) beginning no later than the Ponzi Start Date through the  
conclusion of the prepetition time period analyzed by the CRO and his advisors (which,  
18 for the avoidance of doubt, ended prior to the retention of new counsel and financial  
advisors by the Debtors in July 2023), the iCap enterprise operated as a Ponzi scheme  
raising approximately \$230 million from over 1,800 investors in the United States and  
abroad; and (ii) the Ponzi scheme involved the payment of purported returns to existing  
investors from funds contributed by new investors. The Plan Proponents shall not seek  
Ponzi Findings that would be binding on any other court or governmental or regulatory  
authority.

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This comprehensive compromise and settlement is a critical component of the Plan and is designed to provide a resolution of the innumerable disputed intercompany and intercreditor Claims, Liens, and Causes of Action that otherwise could take years to resolve, which would delay and undoubtedly reduce the Distributions that ultimately would be available for all Creditors.

**1. Special Provisions Relating to Investor Claims.** The following provisions apply to Investor Claims (the “**Investor Claims Special Provisions**”):

a. The Holders of Allowed Investor Claims will receive the treatment provided for such Holders under the Plan. For the avoidance of doubt, any and all purported Equity Interests of an Investor in any Debtor shall be deemed and treated as Investor Claims of the Investor pursuant to the Plan, regardless of the prepetition designations used by the Debtors and/or Investors.

b. The iCap Trust will be created to pursue the iCap Trust Actions for the benefit of all the iCap Trust Beneficiaries; to establish and hold the Distribution Reserves; and to receive and distribute to the holders of iCap Trust Interests the net proceeds of the monetization or other disposition of the iCap Trust Assets in accordance with the Plan and the iCap Trust Agreement.

c. The iCap Trustees shall have discretion, subject to the iCap Trust Agreement, to determine whether and how to make demand upon, or sue, Investors liable for a Net Prepetition Investor Recovery, including, but not limited to, the discretion not to bring suit or make a demand because of the Investor’s financial hardship. That discretion shall be exercised in accordance with guidelines developed by the iCap Trustees in consultation with the iCap Trust Supervisory Board subject to the iCap Trust Agreement. No party should assume that they will be entitled to the exercise of such discretion.

d. In the event that an Investor Claim has been transferred or assigned, all Collateral Source Recoveries that were received by a prior Holder of the Claim shall be included for purposes of determining the Allowed amount of an Investor Claim as if such transferee or assignee had received such distribution or recovery.

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1                   e. Upon request, Investors must, within twenty-one (21) calendar days  
2 of receipt of such request, respond to requests for information by the iCap Trustees  
3 with respect to Investor Claims. Failure to respond to a request for information may  
subject the Investor's Claim to disallowance in the iCap Trustees' full discretion.

4                   f. At the end of each quarter, beginning with the first full quarter after  
5 the iCap Trust is established, the iCap Trustees will provide a report to the Investors  
6 summarizing the recovery actions the iCap Trust has engaged in during the quarter and  
7 detailing whether the iCap Trust is abandoning any specific Avoidance Actions or  
Causes of Action that it has determined it will not pursue, thus allowing Investors to  
pursue such actions, at their option.

8                   **2. Special Provisions Relating to Individual Investor-Specific Claims.**

9 Investors retain the right to independently pursue any claims against third parties where  
they have independent legal standing, and where such claims are **not** owned by the  
10 iCap Trust under this Plan, specifically claims owned by the iCap Trust and defined in  
the Plan as Causes of Action and Avoidance Actions ("Individual Investor-Specific  
11 Claims"). Examples of such claims include, but are not limited to: loss of lien or lien  
priority; claims against the investor's own professional advisors; claims against  
12 retirement service providers; and other claims arising from an investor's specific  
situation. For the avoidance of doubt, Individual Investor-Specific Claims do not  
13 encompass claims shared by all Investors or claims to recover commissions or referral  
fees paid by the Debtors to third parties in relation to an Investor's investment with the  
14 Debtors. The Plan will not interfere with an Investor's right to pursue these Individual  
15 Investor-Specific Claims, except as required (as determined by the iCap Trustees) to  
16 preserve iCap Trust Assets.

17                   a. Any recovery by an Investor on an Individual Investor-Specific  
Claim shall reduce that Investor's entitlement to receive Distributions from the iCap  
18 Trust as follows:

19                   (1) Any recovery, net of reasonable fees and expenses actually  
incurred by or on behalf of the Investor, shall be first applied to reduce the applicable  
20 Investor Class A Claim, if any, and then after the Investor Class A Claim is reduced to  
\$0, shall be applied to reduce the applicable Investor Class B Claim.  
21

22  
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1                   b.     Each Investor must promptly notify the Debtors or the iCap  
2 Trustees, as applicable, in writing, if such Investor receives any consideration on  
3 account of an Individual Investor-Specific Claim. This notification must be submitted  
4 within thirty (30) days of receiving said consideration and must detail the total amount  
5 recovered, along with any associated fees and expenses incurred. Failure to adhere to  
6 this reporting obligation may subject the Investor's Claim to disallowance in the iCap  
7 Trustees' full discretion, and the clawback of any Distributions previously received  
8 under the Plan.

9

## ARTICLE IV. ACCEPTANCE OR REJECTION OF THE PLAN

10                  **A. Impaired Claims Entitled to Vote**

11                  The Plan Proponents shall only solicit the votes of Holders of Allowed Claims in  
12 Class 3 (Investor Claims) and Class 4 (General Unsecured Claims).

13                  **B. Acceptance by an Impaired Class**

14                  Pursuant to Bankruptcy Code section 1126(c), except as provided in Bankruptcy  
15 Code section 1126(e), acceptance of the Plan by Holders of Claims in any Class  
16 eligible to vote on it occurs when the Plan receives approval from Holders representing  
17 at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and over one-half ( $\frac{1}{2}$ ) in number of the  
18 Allowed Claims in that Class who have duly voted to accept or reject the Plan within  
19 the stipulated timeframe.

20                  **C. Presumed Acceptance by Unimpaired Classes**

21                  Class 1 (Priority Claims) and Class 2 (Secured Claims) are unimpaired under the  
22 Plan. Pursuant to Bankruptcy Code section 1126(f), Holders of unimpaired Claims are  
23 presumed to have accepted the Plan and the Plan Proponents therefore will not solicit  
their votes.

24                  **D. Certain Impaired Classes Deemed to Reject the Plan**

25                  The Plan Proponents have decided not to solicit the votes of Holders of any  
26 Claims in Class 5 (Subordinated Claims) and Holders of those Claims will therefore be

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1           deemed to have rejected the Plan and will not be entitled to vote on the Plan. Holders of  
2           Class 6 Equity Interests are not entitled to receive or retain any property or interests in  
3           property under the Plan and are therefore deemed to have rejected the Plan pursuant to  
4           Bankruptcy Code section 1126(g). They are not entitled to vote on the Plan and their  
5           votes will not be solicited by the Plan Proponents.

6

**E. Modification of Votes Already Cast**

7

After the Voting Deadline, Creditors eligible to vote on the Plan cannot modify  
8           their cast votes or any related elections without obtaining written consent from the Plan  
9           Proponents. Such consent is subject to the reasonable discretion of the Plan Proponents.

10

**F. Vacant Classes Eliminated**

11

Any Class that does not contain a Holder of an Allowed Claim, or a Holder of a  
12           Claim that is temporarily allowed under Bankruptcy Rule 3018, measured as of the date  
13           on which the Confirmation Hearing begins, shall be deemed deleted from the Plan for  
14           the purpose of determining whether the Plan was accepted by that Class pursuant to  
15           Bankruptcy Code section 1129(a)(8).

16

**ARTICLE V.  
IMPLEMENTATION OF THE PLAN**

17

**A. Overview**

18

As detailed below, the Plan will be implemented through, among other things,  
19           the establishment of the iCap Trust and the appointment of the iCap Trustees and the  
20           iCap Trust Supervisory Board. The iCap Trust will make Distributions in accordance  
21           with the Plan.

22

**B. Streamlining the Debtors' Structure and Governance**

23

1. **Corporate Action.** On the Effective Date, all matters under the Plan  
involving or requiring action of the directors, members, managers, or officers of the  
Debtors, including, but not limited to, actions requiring a vote or other approval of the  
board of directors or any of the members or officers of the Debtors or the execution of  
any documentation incident to or in furtherance of the Plan, shall be deemed to have  
been authorized by the Confirmation Order and to have occurred and be in effect from

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1 and after the Effective Date, without any further action by the Bankruptcy Court or the  
2 directors, members, managers, or officers of the Debtors.

3       **2. Debtors' Existing Directors and Officers.** On the Effective Date, each of  
4 the Debtors' existing directors and officers including, without limitation, the CRO,  
5 shall be terminated automatically without the need for any further action and without  
6 the need for any corporate or limited liability company filings, and they shall have no  
7 ongoing rights against or obligations to the Debtors or the Estates, including under any  
8 applicable prepetition agreements (all of which will be deemed terminated); *provided,*  
9 *however*, that the Debtors' indemnification and defense obligations under any such  
agreements shall survive the foregoing termination and remain unaltered by the Plan.  
On the Effective Date, the iCap Trustees shall succeed to all such powers as would  
have been applicable to the Debtors' officers and directors in respect of all iCap Trust  
Assets.

10       **3. Dissolution of the Debtors.** On and as of the earlier of the Case Closing  
11 Date and the date on which the iCap Trustees File with the Bankruptcy Court a notice  
12 of dissolution as to a Debtor, such Debtor will be dissolved automatically without the  
13 need for any further action, including the filing of any corporate or limited liability  
14 company filings; *provided, however*, that the iCap Trust may in its discretion file any  
15 certificates of cancellation as may be appropriate in connection with dissolution of any  
Debtor. All applicable regulatory or governmental agencies shall take all steps  
necessary to allow and effect the prompt dissolution of the Debtors as provided herein,  
without the payment of any fee, tax, or charge and without need for the filing of any  
certificates.

16       **4. Corporate Documents and Corporate Authority.** On the Effective Date,  
17 the certificates of incorporation, bylaws, operating agreements, and articles of  
18 organization, as applicable, of all the Debtors shall be deemed amended to the extent  
19 necessary to carry out the provisions of the Plan. The entry of the Confirmation Order  
20 shall constitute authorization for the Debtors and the iCap Trustees, as applicable, to  
21 take or cause to be taken all actions (including, if applicable, corporate actions)  
22 necessary or appropriate to implement all provisions of, and to consummate, the Plan  
prior to, on, and after the Effective Date and all such actions taken or caused to be  
taken shall be deemed to have been authorized and approved by the Bankruptcy Court

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1 without further approval, act, or action under any applicable law, order, rule, or  
2 regulation.

3 **C. Cancellation of Indebtedness**

4 On the Effective Date, except for the purpose of evidencing a right to distribution  
5 under this Plan, any Notes or other instruments or documents evidencing or creating  
6 any indebtedness or obligations of, or interest in, the Debtors, except assumed  
7 executory contracts and assumed unexpired leases, and/or such Notes or other  
8 instruments evidencing indebtedness or obligations of the Debtors that are unimpaired,  
9 reinstated, assumed, or amended and restated under this Plan, shall be cancelled and  
10 terminated and of no further force or effect.

11 **D. iCap Trust**

12 **1. Appointments.** On and after the Effective Date, the initial iCap Trustees  
13 shall become and serve as iCap Trustees. The iCap Trustees' shared compensation will  
14 be set at five percent (5%) of the iCap Trust's gross recoveries, the payment terms and  
15 timing of which will be set forth in the iCap Trust Agreement and the Plan Supplement.

16 On and after the Effective Date, the initial iCap Trust Supervisory Board  
17 shall begin to serve without further action consistent with the terms of the Plan and  
18 iCap Trust Agreement. The purpose of the iCap Trust Supervisory Board is to oversee  
19 the performance of the iCap Trustees' duties and to otherwise carry out and serve the  
20 functions described in the Plan and in the iCap Trust Agreement. Compensation for the  
21 iCap Trust Supervisory Board will be set forth in the iCap Trust Agreement and the  
22 Plan Supplement.

23 At the time of Confirmation of the Plan and formation of the iCap Trust, John  
24 Bender shall serve as litigation counsel to the iCap Trust and Bush Kornfeld LLP shall  
25 serve as restructuring counsel to the iCap Trust.

26 **2. Creation and Governance of the iCap Trust.** On the Effective Date, the  
27 iCap Trustees shall execute the iCap Trust Agreement and shall take any other steps  
28 necessary to establish the iCap Trust in accordance with the Plan. For federal income  
29 tax purposes, the transfer of the assets to the iCap Trust will be treated as a sale or other

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1 disposition of assets to the iCap Trust Beneficiaries in exchange for their Claims in the  
2 Chapter 11 Cases. Any income or loss from the transfer of assets to the iCap Trust shall  
3 flow through to the ultimate taxpaying member of each Debtor who will be responsible  
4 to pay the tax liability. For federal income tax purposes, the iCap Trust Beneficiaries  
5 shall be treated as the grantors of the iCap Trust and deemed to be the owners of the  
6 assets of the iCap Trust. The transfer of the iCap Trust Assets to the iCap Trust shall be  
7 deemed a transfer to the iCap Trust Beneficiaries by the Debtors, followed by a deemed  
8 transfer by such iCap Trust Beneficiaries to the iCap Trust. The Debtors, the iCap Trust  
9 Beneficiaries, and the iCap Trust will consistently report the valuation of the assets  
10 transferred to the iCap Trust. Such consistent valuations and revised reporting will be  
11 used for all federal income tax purposes. Income deductions, gain, or loss from the  
12 iCap Trust shall be reported to the beneficiaries of the iCap Trust in conjunction with  
13 the filing of the iCap Trust's income tax returns. Each iCap Trust Beneficiary shall  
14 report income, deductions, gain, or loss on such iCap Trust Beneficiary's income tax  
15 returns. The iCap Trust shall be governed by the iCap Trust Agreement and  
16 administered by the iCap Trustees and the iCap Trust Supervisory Board. The powers,  
17 rights, and responsibilities of the iCap Trustees shall be specified in the iCap Trust  
18 Agreement.

19       **3. Vesting of iCap Trust Assets.** On the Effective Date, the iCap Trust will  
20 be automatically vested with all the Debtors' and the Estates' respective rights, title,  
21 and interest in and to all iCap Trust Assets. Except as specifically provided in the Plan  
22 or the Confirmation Order, the iCap Trust Assets shall automatically vest in the iCap  
23 Trust free and clear of all Claims, Liens, or interests subject only to the iCap Trust  
Interests and the iCap Trust Expenses, as provided for in the iCap Trust Agreement,  
and such vesting shall be exempt from any stamp, real estate transfer, other transfer,  
mortgage reporting, sales, use, or other similar tax. The iCap Trustees shall be the  
exclusive trustee of the iCap Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26  
U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to  
Bankruptcy Code section 1123(b)(3) regarding all iCap Trust Assets. The iCap Trust  
shall hold and distribute the iCap Trust Assets in accordance with the provisions of the  
Plan and the iCap Trust Agreement.

24       Notwithstanding the foregoing or any other provision in the Plan, in the event  
25 that the iCap Trust receives any monies from the United States or any other  
26 Governmental Unit, obtained as forfeited assets (or otherwise) by the Governmental

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1 Unit for the benefit of the Investor victims of the Debtors' prepetition Ponzi scheme, all  
2 such monies shall not constitute Estate Assets or iCap Trust Assets, and the iCap  
3 Trustees are authorized to and shall distribute all such monies only to Investors who are  
4 Holders of Class A iCap Trust Interests or Class B iCap Trust Interests on account  
5 thereof, subject to the Plan and the iCap Trust Agreement; *provided* that the iCap  
6 Trustees and their agents will be reimbursed from such monies for reasonable costs and  
7 expenses incurred by said parties related to the iCap Trust's collection, administration,  
8 and distribution of such monies to the applicable Investors.

9

10       **4. Sales of Estate Assets.** In accordance with Bankruptcy Code section  
11 1146(a), no stamp tax, conveyance fee, real estate, excise, or other transfer tax,  
12 mortgage tax, mortgage recording tax, Uniform Commercial Code filing or recording  
13 filing fee, or similar tax shall apply to (1) the sale or transfer of iCap Trust Assets to the  
14 iCap Trust; (2) the issuance, Distribution, transfer, or exchange of Notes or equity  
15 securities under the Plan; or (3) the establishment of any mortgage, deed of trust, Lien,  
16 pledge, or other security interest, or the execution or delivery of any lease, sublease,  
17 deed, or other transfer instrument related to or in support of the Plan. Upon entry of the  
18 Confirmation Order, the appropriate state or local governmental officials or agents and  
19 any third party shall forgo the collection of any such tax, recordation fee, or  
20 governmental assessment and accept for filing and recordation any of the foregoing  
21 instruments or other documents without the payment of any such tax, recordation fee,  
22 or assessment.

23

24       As part of implementation of the Plan, following Confirmation, the iCap Trustees  
25 will sell iCap Trust Assets. No further order of the court will be necessary to sell iCap  
26 Trust Assets. All sales of real property contemplated by the Plan shall be free and clear  
27 of all Liens, claims, encumbrances, and/or interests of any kind pursuant to Bankruptcy  
28 Code Sections 1123(a)(5)(D) and 1141(c), with the proceeds of such sales being paid  
29 pursuant to the terms of the Plan. Pursuant to Washington Administrative Code 458-  
30 61A-207, the iCap Trust will be exempt from the imposition of real estate excise taxes  
31 that would otherwise be payable under Revised Code of Washington 82.45.060 and/or  
32 other applicable law as to any sale of the iCap Trust Assets at any time following  
33 Confirmation. Pursuant to Bankruptcy Code section 1146, the iCap Trust's making or  
34 delivery of an instrument of transfer as to any iCap Trust Assets following  
35 Confirmation may not be taxed under any law imposing a stamp tax or similar tax.

36

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1           **5. Purpose of the iCap Trust.** The iCap Trust shall be established for the  
2 purpose of pursuing or liquidating the iCap Trust Assets and making Distributions to  
3 the iCap Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-  
4(d) and the terms of the Plan.

4           **6. Authority.** Subject to the supervision of the iCap Trust Supervisory Board  
5 as set forth in the iCap Trust Agreement, the iCap Trustees shall have the authority  
6 without the need for Bankruptcy Court approval (in each case, unless otherwise  
7 provided in the Plan) to carry out and implement all applicable provisions of the Plan,  
8 including to:

9                 a. review, reconcile, compromise, settle, or object to Claims and  
10 resolve such objections as set forth in the Plan;

11                 b. assert and enforce all legal or equitable remedies and defenses  
12 belonging to the Debtors or their Estates, including setoff, recoupment, and any rights  
13 under Bankruptcy Code section 502(d);

14                 c. calculate and make Distributions and calculate and establish  
15 reserves under and in accordance with the Plan;

16                 d. retain, compensate, and employ professionals and other Persons to  
17 represent the iCap Trustees with respect to and in connection with their rights and  
18 responsibilities;

19                 e. establish, maintain, and administer documents and accounts of the  
20 Debtors as appropriate, which shall be segregated to the extent appropriate in  
21 accordance with the Plan;

22                 f. maintain, conserve, collect, settle, and protect the iCap Trust Assets,  
23 including, but not limited to, pursuing, engaging in, and consummating any Investor  
Avoidance Settlements and/or Broker Settlements;

24                 g. pursue, prosecute, settle, or abandon any iCap Trust Actions,  
25 including, but not limited to, Investor Avoidance Settlements and/or Broker  
Settlements;

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1                   h.     act on behalf of the Debtors in all adversary proceedings and  
2     contested matters then pending or that can be commenced in the Bankruptcy Court and  
3     in all actions and proceedings pending or commenced elsewhere;

4                   i.     proceed with and employ all discovery devices permitted under  
5     applicable law, including Bankruptcy Rule 2004, in order to investigate any Claims,  
6     iCap Trust Actions, or iCap Trust Assets;

7                   j.     sell, liquidate, transfer, assign, distribute, abandon, or otherwise  
8     dispose of the iCap Trust Assets or any part thereof or interest therein upon such terms  
9     as the iCap Trustees determine to be necessary, appropriate, or desirable;

10                  k.     negotiate, incur, and pay the iCap Trust Expenses;

11                  l.     prepare and file any and all informational returns, reports,  
12     statements, returns, and other documents or disclosures relating to the Debtors that are  
13     required under the Plan, by any Governmental Unit, or by applicable law;

14                  m.    compile and maintain the official claims register, including for  
15     purposes of making initial and subsequent Distributions under the Plan;

16                  n.     take such actions as are necessary or appropriate to wind-down and  
17     dissolve the Debtors;

18                  o.     effect all actions and execute all agreements, instruments, and other  
19     documents, and take all actions, necessary to consummate the Plan;

20                  p.     comply with the Plan, exercise the iCap Trustees' rights, and  
21     perform the iCap Trustees' obligations; and

22                  q.     exercise such other powers as deemed by the iCap Trustees to be  
23     necessary and proper to implement the Plan.

24                  To the extent necessary to give full effect to their administrative rights and duties  
25     under the Plan, the iCap Trustees shall be deemed to be vested with all rights, powers,  
26     privileges, and authorities of (i) an appropriate corporate or limited liability company

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1           officer or manager of each of the Debtors under any applicable nonbankruptcy law and  
2           (ii) a “trustee” of each of the Debtors under Bankruptcy Code sections 704 and 1106.  
3           The iCap Trust Supervisory Board will have all rights and powers of a corporate board  
4           appointed under Washington law.

5           **7. Limitation of Liability.** The iCap Trustees and the iCap Trust  
6           Supervisory Board shall enjoy all the rights, powers, immunities, and privileges  
7           applicable to a Bankruptcy Code chapter 7 trustee with respect to limitations of  
8           liability. The iCap Trustees may, in connection with the performance of their  
9           functions, in their sole and absolute discretion, consult with their attorneys,  
10          accountants, advisors, and agents, and shall not be liable for any act taken, or omitted  
11          to be taken, or suggested to be done in accordance with advice or opinions rendered  
12          by such Persons, regardless of whether such advice or opinions were in writing.  
13          Notwithstanding such authority, the iCap Trustees shall be under no obligation to  
14          consult with any such attorneys, accountants, advisors, or agents, and their  
15          determination not to do so shall not result in the imposition of liability on the iCap  
16          Trustees unless such determination is based on willful misconduct, gross negligence,  
17          or fraud. Persons dealing with the iCap Trustees shall look only to the iCap Trust  
18          Assets to satisfy any liability incurred by the iCap Trustees to such Person in carrying  
19          out the terms of the Plan or the iCap Trust Agreement. No recourse will ever be had,  
20          directly or indirectly, against the iCap Trustees or their members, officers, directors,  
21          employees, professionals, representatives, agents, successors, or assigns, by legal or  
22          equitable proceedings or by virtue of any statute or otherwise, or any deed of trust,  
23          mortgage, pledge, or note, nor upon any promise, contract, instrument, undertaking,  
             obligation, covenant, or agreement whatsoever executed by the iCap Trustees under  
             the Plan or by reason of the creation of any indebtedness by the iCap Trustees under  
             the Plan.

17           **8. Indemnification.** The iCap Trust Agreement will include customary  
18          indemnification provisions.

19           **9. Insurance.** The iCap Trustees shall be authorized, but not required, to  
20          obtain any insurance coverages deemed to be reasonably necessary, at the iCap  
21          Trust’s sole expense, for themselves, the iCap Trustees, and their respective agents,  
22          including coverage with respect to the liabilities, duties, and obligations of the iCap  
23          Trustees, which insurance coverage may, at the sole discretion of the iCap  
             Trustees, be extended for a reasonable period after the termination of the iCap Trust.

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1           **10. Tax Reporting.** The iCap Trust shall timely file tax returns for the iCap  
2 Trust treating the iCap Trust as a grantor trust pursuant to Treasury Regulation section  
3 1.671- 4(a).

4           The iCap Trust shall be responsible for timely payment of all taxes (if any)  
5 imposed on and payable by the iCap Trust, the Debtors, or any iCap Trust Assets.

6           The iCap Trust shall distribute such tax-related notices, beneficiary statements,  
7 and informational returns, as applicable, to the applicable Holders of Allowed Claims  
8 as are required by applicable law or that the iCap Trustees determine are otherwise  
9 necessary or desirable.

10          The iCap Trust is authorized to file a request for expedited determination under  
11 Bankruptcy Code section 505(b) for any tax returns filed with respect to the Debtors.

12          **11. Distributions to iCap Trust Beneficiaries.** After payment of or  
13 reserve for all senior claims (including without limitation, Administrative Expense  
14 Claims, Priority Claims, Priority Tax Claims, and Secured Claims) in accordance  
15 with the Plan and the iCap Trust Agreement, the iCap Trust shall make Distributions  
16 to iCap Trust Beneficiaries pursuant to the iCap Trust Interests Waterfall.

17          The iCap Trust, in the iCap Trustees' sole discretion, may make periodic  
18 Distributions to the iCap Trust Beneficiaries at any time following the Effective Date;  
19 *provided* that such Distributions are otherwise permitted under, and not inconsistent  
20 with, the iCap Trust Interests Waterfall, the other terms of the Plan, the iCap Trust  
21 Agreement, and applicable law.

22          **12. Cash Investments.** The iCap Trustees may invest Cash of the iCap Trust,  
23 including any earnings or proceeds from such investment, and such investments will  
not be required to comply with Bankruptcy Code section 345(b); *provided, however,*  
that such investments must be investments that are permitted to be made by a  
“liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d),  
as reflected therein, or under applicable guidelines, rulings, or other controlling  
authorities.

24          **13. Securities Act Exemption.** To the extent the iCap Trust Interests are  
25 deemed to be “securities,” the issuance of those interests under the Plan is exempt

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1 from registration under the Securities Act and any applicable state and local securities  
2 laws pursuant to Bankruptcy Code section 1145.

3           **14. Contribution of Contributed Claims.** On the Effective Date, all  
4 Contributed Claims are irrevocably contributed to the iCap Trust and shall thereafter  
5 be iCap Trust Actions for all purposes. No Person may rely on the absence of a  
6 specific reference in the Plan, the Confirmation Order, the iCap Trust Agreement, or  
7 the Disclosure Statement to any Contributed Claims against such Person as any  
8 indication that the iCap Trust will not pursue any and all available Contributed  
9 Claims against such Person. The objection to the Allowance of any Claims will not in  
10 any way limit the ability or the right of the iCap Trust to assert, commence, or  
11 prosecute any Contributed Claims. Nothing contained in the Plan, the Confirmation  
Order, the iCap Trust Agreement, or the Disclosure Statement will be deemed to be a  
waiver, release, or relinquishment of any Contributed Claims that the Contributing  
Claimants had immediately prior to the Effective Date. The iCap Trust shall have,  
retain, reserve, and be entitled to assert all Contributed Claims fully as if the  
Contributed Claims had not been contributed to the iCap Trust in accordance with  
the Plan and the iCap Trust Agreement.

12           **15. Authority to Pursue and Resolve iCap Trust Actions.** The iCap  
13 Trust, as a successor in interest to the Debtors, the Estates, and the Contributing  
14 Claimants will have the exclusive right, power, and interest on behalf of itself, the  
15 Debtors, the Estates, and the Contributing Claimants to institute, commence, file,  
16 pursue, prosecute, enforce, abandon, settle, compromise, release, waive, dismiss, or  
17 withdraw any and all iCap Trust Actions without any further order of the Bankruptcy  
Court, except as otherwise provided in the iCap Trust Agreement. From and after the  
18 Effective Date, the iCap Trust, in accordance with Bankruptcy Code section  
19 1123(b)(3), shall serve as a representative of the Estates with respect to any and all  
iCap Trust Actions that were Estate Assets and shall retain and possess the right to  
institute, commence, file, pursue, prosecute, enforce, abandon, settle, compromise,  
release, waive, dismiss, or withdraw, as appropriate, any and all iCap Trust Actions in  
any court or other tribunal.

20           **16. Termination.** The iCap Trustees and the iCap Trust shall be discharged  
21 or terminated, as the case may be, at such time as: (a) the iCap Trustees determine that  
22 the pursuit of additional iCap Trust Actions is not likely to yield sufficient additional

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proceeds to justify further pursuit of such iCap Trust Actions and (b) all Distributions required to be made by the iCap Trust to Holders of Allowed Claims and to the iCap Trust Beneficiaries under the Plan and the iCap Trust Agreement have been made, but in no event shall the iCap Trust be terminated later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six (6) months before the end of the preceding extension), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the iCap Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the iCap Trust Assets. Upon termination of the iCap Trust, any remaining iCap Trust Assets that exceed the amounts required to be paid under the Plan may be transferred by the iCap Trustees to a non-profit organization of their choice.

**17. Interpretation.** To the extent there is any inconsistency between the Plan and the iCap Trust Agreement, the Plan shall control.

## **E. Substantive Consolidation**

On the Effective Date, the Debtors, other than the Excluded Debtors with respect to Claims in Classes 2B and 2C, shall be substantively consolidated pursuant to Bankruptcy Code sections 105(a), 541, 1123, and 1129; *provided, however*, that the Debtors or iCap Trustees, as applicable, reserve the right to effectuate, without further motion practice, substantive consolidation of the Excluded Debtors after the Claims in Classes 2B and 2C are consensually resolved with the Holders of such Claims upon filing notice with the Bankruptcy Court. As a result of the substantive consolidation, on the Effective Date, all property, rights, and claims of the Debtors and all Claims against the Debtors (other than Claims in Classes 2B and 2C) shall be deemed to be pooled for purposes of Distributions under the Plan and, in the iCap Trustees' discretion, other purposes. Further, as a result of this substantive consolidation, all claims between and among the Debtors shall be cancelled. Holders of Allowed Claims shall be entitled to only one satisfaction on account of such Claims, and any contingent or otherwise duplicative Claims against one or more of the Debtors based upon claims for which one or more of the Debtors are also liable shall be disallowed. Holders of Claims in Classes

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1           2B and 2C shall be entitled to recover up to the full amount of their Allowed Secured  
2           Claim from the sale proceeds for their Collateral.

3           Entry of the Confirmation Order shall constitute the approval, pursuant to  
4           Bankruptcy Code sections 105(a), 541, 1123, and 1129, of the substantive  
5           consolidation of the Debtors in the manner set forth in this Article; *provided, however,*  
6           that while the Debtors shall be substantively consolidated for purposes of Distributions  
7           to Creditors, such that all Investors shall have claims against a single pool of the  
8           Debtors' consolidated assets, the actual substantive consolidation of entities,  
9           particularly for tax purposes, shall be at the option of the Debtors or the iCap Trust, as  
10          applicable. Notwithstanding such substantive consolidation, however, fees payable  
11          pursuant to 28 U.S.C. § 1930 shall be due and payable by each individual Debtor  
12          through the Effective Date.

13          Substantive consolidation under the Plan shall not affect, without limitation, any  
14          defenses or rights the Debtors or the iCap Trust may have to any Claim, Cause of  
15          Action, or Avoidance Action, including the ability to assert a counterclaim.

16          Any Intercompany Claims that could be asserted by one Debtor against another  
17          Debtor will be extinguished immediately before the Effective Date with no separate  
18          recovery on account of any such Claims and any Intercompany Liens that could be  
19          asserted by one Debtor regarding any Estate Assets owned by another Debtor will be  
20          deemed released and discharged on the Effective Date; *provided, however,* that solely  
21          with respect to any Secured Claim of a non-debtor as to which the associated Lien  
22          would be junior to any Intercompany Lien, the otherwise released Intercompany Claim  
23          and associated Intercompany Lien will be preserved for the benefit of, and may be  
24          asserted by the iCap Trust as to any Collateral so as to retain the relative priority and  
25          seniority of such Intercompany Claim and associated Intercompany Lien.

26          The Disclosure Statement and the Plan together form a request for the  
27          Bankruptcy Court's approval of the substantive consolidation outlined in the Plan.  
28          Unless a Creditor, purportedly impacted by this consolidation, submits a written  
29          objection before the Plan's confirmation objection deadline, the consolidation described  
30          in the Plan may receive approval during the Confirmation Hearing. Should objections  
31          be filed within the specified timeframe, the Bankruptcy Court will address such  
32          objections at the Confirmation Hearing.

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If the Bankruptcy Court determines that substantive consolidation of any given Debtor is not appropriate, then the Debtors may request that the Bankruptcy Court otherwise confirm the Plan and approve the treatment of and Distributions to the different Classes under the Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Debtors reserve their rights (i) to seek confirmation of the Plan without implementing substantive consolidation of any given Debtor, and, in the Debtors' reasonable discretion after consultation with the Unsecured Creditors' Committee, to request that the Bankruptcy Court approve the treatment of and Distributions to any given Class under the Plan on an adjusted, Debtor-by-Debtor basis; and (ii) after consultation with the Unsecured Creditors' Committee, to seek to substantively consolidate all Debtors into iCap Enterprises, Inc. if all impaired Classes entitled to vote on the Plan vote to accept the Plan.

## F. Preservation of Rights of Action

1. **Avoidance Actions and Causes of Action.** Except as otherwise provided in the Plan or the Confirmation Order (including in the Investor Claims Special Provisions), in accordance with Bankruptcy Code section 1123(b), from and after the Effective Date, the iCap Trust will retain all rights to institute, commence, file, pursue, prosecute, enforce, abandon, settle, compromise, release, waive, dismiss, or withdraw, as appropriate, any and all of the Debtors' or Estates' Causes of Action and Causes of Action that are Contributed Claims (whether existing as of the Petition Date or thereafter arising), and all Avoidance Actions, all as iCap Trust Actions, in each case in any court or other tribunal, including in an adversary proceeding Filed in the Chapter 11 Cases, subject to the requirements set forth in the Plan and the iCap Trust Agreement. The iCap Trust shall have the exclusive right, power, and interest on behalf of itself, the Debtors, the Estates, and the Contributing Claimants to, enforce, sue on, settle, compromise, transfer, or assign (or decline to do any of the foregoing) any or all of the iCap Trust Actions without notice to or approval from the Bankruptcy Court, subject to the iCap Trust Agreement. In accordance with the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court, from and after the Effective Date, the iCap Trust may compromise and settle iCap Trust Actions, subject to the iCap Trust Agreement. It is anticipated that the iCap Trust will pursue iCap Trust Actions primarily under alternate fee arrangements and not a typical hourly fee structure, employing the services of professionals selected by (i) the Debtors, in

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1 consultation with the Unsecured Creditors' Committee, prior to the Effective Date or  
2 (ii) the iCap Trustees, as provided in the iCap Trust Agreement, on and after the  
3 Effective Date. For the avoidance of doubt, nothing in the Disclosure Statement or this  
4 Plan shall require the iCap Trust to commence or pursue litigation concerning any iCap  
5 Trust Action.

6 **2. Preservation of All iCap Trust Actions Not Expressly Settled or**  
7 **Released.** The failure to specifically identify in the Disclosure Statement (including its  
8 exhibits and schedules) or the Plan any potential or existing Avoidance Actions or  
9 Causes of Action as an iCap Trust Action is not intended to and shall not limit the  
10 rights of the iCap Trust to pursue any such Avoidance Actions or Causes of Action.  
11 Unless a iCap Trust Action is expressly waived, relinquished, released, compromised,  
12 or settled in the Plan or any Final Order (including the Confirmation Order), the  
13 Debtors expressly reserve such iCap Trust Action for later resolution by the iCap Trust  
14 (including any Avoidance Actions or Causes of Action not specifically identified or of  
15 which the Debtors may presently be unaware or that may arise or exist by reason of  
additional facts or circumstances unknown to the Debtors at this time or facts or  
circumstances that may change or be different from those the Debtors now believe to  
exist). In addition, the right to pursue or adopt any claims alleged in any lawsuit in  
which any Debtor or the iCap Trust is a plaintiff, defendant, or an interested party is  
fully reserved as against any Person that is not a Released Party, including the plaintiffs  
or co-defendants in such lawsuits. No preclusion doctrine, including the doctrines of res  
judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial,  
equitable, or otherwise), or laches, shall apply to any iCap Trust Actions upon, after, or  
as a consequence of the confirmation of the Plan.

16 **3. Categories of Preserved Claims.** The Plan specifically preserves the right  
17 for the iCap Trust and iCap Trustees to pursue any and all claims that the Debtors  
18 and/or their Estates have the right to pursue, including all Causes of Action and  
19 Avoidance Actions. Without in any way limiting the iCap Trust's and the iCap  
Trustees' rights to pursue claims against third parties, the following are illustrative  
categories of claims that the iCap Trust will have the right to pursue:

- 20 (a) Insider and non-Insider preference actions arising under bankruptcy  
21 and/or state law;

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- (b) Fraudulent transfer actions arising under bankruptcy and/or state law;
  - (c) Turnover actions under bankruptcy law;
  - (d) Any and all other rights and/or claims arising under the bankruptcy laws;
  - (e) Claims against third parties that aided and abetted the Debtors' conduct;
  - (f) Intentional and unintentional tort claims against third parties, including professional firms and former iCap principals and employees;
  - (g) Claims against third parties that may arise out of or relate to the conduct of an alleged Ponzi scheme;
  - (h) Breach of contract claims;
  - (i) Employment claims against former iCap employees, including breach of duties and breach of non-compete agreements and/or other agreements;
  - (j) Claims against third parties for return of commissions paid;
  - (k) Claims against former principals, directors, and officers for breach of fiduciary duties, breach of duty of loyalty, and similar claims; and
  - (l) All other claims not included in these categories that are Causes of Action and Avoidance Actions.

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1      **G. Exit Financing**

2      On the Effective Date, without the need for further action, the iCap Trust shall enter  
3      into the Exit Financing, including the First Lien Exit Loan Facility and the Tritalent  
4      Exit Loan Facility.

5      **H. Abandonment of Certain Estate Assets**

6      Unless previously sold or disposed of, on the Effective Date, and without the need for  
7      further action, the following Estate Assets shall be deemed abandoned by the Debtors  
8      and their Estates pursuant to Bankruptcy Code section 554 and shall not be considered  
9      iCap Trust Assets:

- 10     • the real property commonly known as 715-775 Broadway, Tacoma, WA;  
11     and
- 12     • the Debtors' interests in Airlink Holding, LLC and Airlink Markets, LLC  
13     (which entities shall be dissolved by the Debtors under the Confirmation  
14     Order) including, without limitation, Airlink Holding, LLC's membership  
15     interests in Airlink Markets, LLC.

16      **ARTICLE VI.**  
17      **PROVISIONS GOVERNING DISTRIBUTIONS**

18      **A. Distributions to Senior Claims and Establishment of Senior Claims Reserve**

19      On or as soon as reasonably practicable after the Effective Date, the iCap  
20      Trustees will establish the Senior Claims Reserve out of Available Cash, and the  
21      Distribution Agent shall make Distributions out of the Senior Claims Reserve to  
22      Holders of, as applicable, Allowed Administrative Expense Claims, Priority Tax  
23      Claims, and Priority Claims in accordance with the Plan. After the payment of all such  
Claims in accordance with the Plan and the payment of all related reasonable costs and  
expenses of the iCap Trustees and the Distribution Agent (including fees and costs to  
litigate and otherwise resolve Contingent Claims, Disputed Claims, or Unliquidated  
Claims, and administer and make Distributions), any remaining Cash in the Senior  
Claims Reserve will be promptly remitted to the iCap Trust to be used for any purposes  
subject to the Plan and the iCap Trust Agreement. The iCap Trustees or their designee

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shall not be required to give any bond or surety or other security for the performance of any duties as the Distribution Agent.

## **B. Distributions to Secured Claims and Establishment of the Secured Claims Reserves**

On or as soon as reasonably practicable after the Effective Date, the iCap Trustees will establish the Secured Claims Reserves. Upon the sale or refinancing of any Collateral subject to a Lien of a Holder of an Allowed Secured Claim, such Claim shall be paid from the applicable Secured Claims Reserve or treated as otherwise provided in Article III.B.2. After the payment of all such Claims in accordance with the Plan, any remaining Cash in the Secured Claims Reserves will be promptly remitted to the iCap Trust to be used for any purposes subject to the Plan and the iCap Trust Agreement.

### C. Calculating Distributions

The iCap Trust shall undertake in its reasonable discretion to make in accordance with the Plan all calculations of Available Cash, Investor Claims, and of other amounts for or relating to Distributions for Holders of Allowed Claims to be made from the iCap Trust or for reserves for Holders of Contingent Claims, Disputed Claims, and Unliquidated Claims to be established by the iCap Trust, and may establish and hold back from Distributions reasonable reserves for other contingencies. When calculating Distributions (and amounts to hold in Distribution Reserves) with respect to Investor Claims, the Outstanding Principal Amounts to be utilized by the iCap Trust shall be determined in accordance with the procedures established by the iCap Trustees.

#### **D. Interest and Other Charges**

Except to the extent provided (i) in Bankruptcy Code section 506(b) and Allowed by a Final Order or otherwise agreed, (ii) in the Plan, or (iii) in the Confirmation Order, postpetition interest shall not accrue or be paid on any Claims, and no Holder of an Allowed Claim shall be entitled to interest, penalties, fees, or late charges accruing or chargeable on any Claim from and after the Petition Date.

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1      **E. Means and Methods of Payment**

2            All Distributions under the Plan shall be made in U.S. Dollars. Where a Claim  
3 has been denominated in foreign currency on a proof of Claim, the Allowed amount of  
4 such Claim shall be calculated in U.S. Dollars based upon the currency conversion rate  
5 in place as of the Petition Date and in accordance with Bankruptcy Code section  
502(b).

6            Cash payments under the Plan shall be made, at the option and in the sole  
7 discretion of the iCap Trustees, by (i) checks drawn on or (ii) wire transfer, electronic  
8 funds transfer, or ACH from a domestic bank. Cash payments to foreign Creditors may  
9 be made, at the option and in the sole discretion of the iCap Trustees, by such means as  
10 are necessary or customary in a particular foreign jurisdiction. Cash payments made  
11 pursuant to the Plan in the form of checks shall be null and void if not cashed within  
12 180 calendar days of the date of the issuance. Requests for reissuance of any check  
13 within 180 calendar days of the date of the issuance shall be made directly to the iCap  
14 Trustees.

15      **F. Fractional Distributions**

16           Notwithstanding anything in the Plan to the contrary, no payment of fractional  
17 cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent  
18 under the Plan would otherwise be required, the actual Distribution made shall reflect a  
19 rounding of such fraction to the nearest whole penny (up or down), with half cents or  
20 more being rounded up and fractions less than half of a cent being rounded down.

21      **G. No Distributions with Respect to Certain Claims**

22           Notwithstanding anything in the Plan to the contrary, no Distributions or other  
23 consideration of any kind shall be made on account of a Claim that is not an Allowed  
Claim. Nonetheless, in undertaking the calculations concerning Allowed Claims under  
the Plan, including the determination of Distributions due to Holders of Allowed  
Claims, each Contingent Claim, Disputed Claim, or Unliquidated Claim shall be treated  
as if it were an Allowed Claim, including rights conferred by Bankruptcy Code section  
506(b), which shall continue to apply until Distribution to the Holders of Secured  
Claims (which, for Unliquidated Claims, shall mean they shall be treated as if Allowed  
in such amounts as determined in the reasonable discretion of the iCap Trustees),

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1 except that if the Holder of such Claim and the iCap Trustees otherwise determine the  
2 amount or number that would constitute a sufficient reserve for such a Claim, such  
3 amount or number shall be used with respect to such Claim. For purposes of calculating  
4 and making Distributions pursuant to the Plan, the iCap Trustees shall be entitled to  
estimate, in good faith and with due regard to litigation risks associated with Disputed  
5 Claims, the maximum dollar amount of Allowed Claims and Disputed Claims,  
inclusive of Contingent Claims or Unliquidated Claims in a particular Class. The iCap  
6 Trustees also shall be entitled to seek one or more estimation orders from the  
7 Bankruptcy Court for such purposes, which requests may be joined with objections to  
the Claims that are subject to any such request. Appropriate Disputed Claims reserves  
8 shall be established for each category of Claims as to which estimates are utilized or  
sought.

9 The iCap Trust may establish a Distribution Reserve on account of Disputed  
10 Claims, Contingent Claims, or Unliquidated Claims. The iCap Trust may, for U.S.  
11 federal income tax purposes (and, to the extent permitted by law, for state and local  
income tax purposes), (i) make an election pursuant to Treasury Regulation section  
12 1.468B-9 to treat the Distribution Reserve as a “disputed ownership fund” within the  
meaning of that section, (ii) allocate taxable income or loss to the Distribution Reserve,  
with respect to any given taxable year (but only for the portion of the taxable year with  
respect to which such Claims are Disputed Claims), and (iii) distribute assets from the  
Distribution Reserve as, when, and to the extent, such Disputed Claims cease to be  
Disputed Claims, Contingent Claims, or Unliquidated Claims, whether by virtue of  
becoming Allowed or otherwise resolved. The iCap Trust Beneficiaries shall be bound  
by such election, if made by the iCap Trustees, and as such shall, for U.S. federal  
income tax purposes (and, to the extent permitted by law, for state and local income tax  
purposes), report consistently therewith.

17 **H. Delivery of Distributions**

18 Distributions in respect of iCap Trust Interests shall be made to Holders of iCap  
19 Trust Interests as of the Distribution Record Date. The iCap Trustees shall have no  
20 obligation to recognize any transfer of Claims occurring after the close of business on  
the Distribution Record Date. Distributions to Holders of iCap Trust Interests or  
21 Allowed Claims that have not been converted to iCap Trust Interests shall be made (a)  
at the addresses set forth in the proofs of Claim Filed by such Holders; (b) at the

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1           addresses reflected in the Schedules if no proof of Claim has been Filed; or (c) at the  
2           addresses set forth in any written notices of address changes delivered to the Claims  
3           Agent or the iCap Trustees. If any Holder's Distribution is returned as undeliverable,  
4           no further Distributions to such Holder shall be made unless and until the iCap Trustees  
5           are notified of such Holder's then-current address. The responsibility to provide the  
6           Claims Agent or the iCap Trustees with a current address of a Holder of iCap Trust  
7           Interests or Claims shall always be the responsibility of such Holder. Amounts in  
8           respect of undeliverable Distributions made by the iCap Trustees shall be held in trust  
9           on behalf of the Holder of the iCap Trust Interest or Claim to which they are payable by  
10          the iCap Trustees until the earlier of the date that such undeliverable Distributions are  
11          claimed by such Holder and 180 calendar days after the date the undeliverable  
12          Distributions were made.

## 13           I.       Withholding, Payment, and Reporting Requirements for Distributions

14          All Distributions under the Plan shall, to the extent applicable, comply with all  
15          tax withholding, payment, and reporting requirements imposed by any federal, state,  
16          provincial, local, or foreign taxing authority, and all Distributions shall be subject to  
17          any such withholding, payment, and reporting requirements. The iCap Trust shall be  
18          authorized to take any and all actions that may be necessary or appropriate to comply  
19          with such withholding, payment, and reporting requirements, including, to the extent  
20          such information is not already available to the iCap Trust, requiring each Holder of an  
21          iCap Trust Interest or Claim to provide a duly completed and properly executed current  
22          Form W-9, Form W-8 (if the payee is a foreign entity), or similar tax form as a  
23          prerequisite to receiving a Distribution. If a Holder of an iCap Trust Interest or Claim  
24          does not provide an appropriate Form W-9, Form W-8 (if the payee is a foreign entity),  
25          or similar tax form or documents reasonably requested by the iCap Trust within 90 days  
26          of written request, the iCap Trust will be required to back up withholding amounts due  
27          to such Holder and/or take such other action as it deems reasonably appropriate.

28          Notwithstanding any other provision of the Plan, (a) each Holder of a iCap Trust  
29          Interest or an Allowed Claim that is to receive a Distribution pursuant to the Plan shall  
30          have sole and exclusive responsibility for the satisfaction and payment of any tax  
31          obligations imposed by any Governmental Unit, including income, withholding, and  
32          other tax obligations, on account of such Distribution, and including, in the case of any  
33          Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that

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would be imposed on the iCap Trust in connection with such Distribution; and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the iCap Trust for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed in connection with such Distribution.

#### J. Defense and Setoff Rights

On and after the Effective Date, the iCap Trust shall have all of the Debtors' and the Estates' rights under Bankruptcy Code section 558. Nothing in the Plan shall affect the rights and defenses of the Debtors, the Estates, or the iCap Trust in respect of any Claim, including all rights in respect of legal and equitable objections, defenses, setoffs, or recoupment against such Claims. Accordingly, the iCap Trust may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors, the Estates, or the iCap Trust, as applicable, may have against the Holder of such Claim; *provided, however,* that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claim or rights that may exist against such Holder.

#### K. Allocation of Distributions

Distributions received under the Plan by Holders of iCap Trust Interests and Claims shall be allocated first to the principal amount of such Claim, and then to accrued interest, if any, with respect to such Claim.

#### L. Joint Distributions

The iCap Trustees may, in their sole discretion, make Distributions jointly to any Holder of a Claim and any other Person that the iCap Trustees have determined to have an interest in such Claim.

#### M. Forfeiture of Distributions

If the Holder of a Claim fails to cash a check payable to it within the time period set forth in Article VI.E, fails to claim an undeliverable Distribution within the time limit set forth in Article VI.H, or fails to complete and return to the iCap Trustees the appropriate Form W-8 or Form W-9 within 180 calendar days after a request for the completion and return of the appropriate form pursuant to Article VI.I (or such later time as approved by a Bankruptcy Court order), then such Holder shall be deemed to

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1 have forfeited its right to any reserved and future Distributions under the Plan. Any  
2 such forfeited Distributions shall be deemed Available Cash for all purposes,  
3 notwithstanding any federal or state escheat laws to the contrary.

4

## N. Claims Paid by Third Parties

5 Except as otherwise set forth herein, to the extent a Holder of a Claim receives a  
6 Distribution on account of such Claim under the Plan and receives payment from a  
7 party that is not a Debtor or the iCap Trustees on account of such Claim, such Holder  
8 shall, within ten (10) days of receipt thereof, repay or return the Distribution to the  
9 applicable Debtor or the iCap Trustees, to the extent the Holder's total recovery on  
10 account of such Claim from the third party and under the Plan exceeds the amount of  
11 such Claim as of the date of any such Distribution under the Plan. The failure of such  
Holder to timely repay or return such Distribution shall result in the Holder owing the  
iCap Trust annualized interest at the Federal Judgment Rate, as in effect as of the  
Petition Date, on such amount owed for each Business Day after the ten-day grace  
period specified above until the amount is repaid.

12

## ARTICLE VII.

### CLAIMS OBJECTIONS AND TREATMENT OF DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS

13

## A. Disputed Claims Resolution

14 From and after the Effective Date, the iCap Trust shall have the exclusive  
15 authority to compromise, resolve, and Allow any Disputed Claim without the need to  
16 obtain approval from the Bankruptcy Court, except as otherwise provided in the iCap  
17 Trust Agreement, and any agreement entered into by the iCap Trust with respect to the  
Allowance of any Claim shall be conclusive evidence and a final determination of the  
18 Allowance of such Claim; *provided, however,* that, under the Plan, all Claims asserted  
by any of the Excluded Parties are Disputed Claims in their entirety and will have no  
19 right to receive any Distributions under the Plan unless and until such Claims are  
affirmatively Allowed by a Final Order. Notwithstanding anything else to the contrary  
herein, and as provided in Bankruptcy Code section 502(d), the iCap Trustees are not  
20 required to make any Distributions to Holders of Allowed Claims, and no such Claims  
shall be deemed Allowed, unless and until such Holder has paid the Net Prepetition  
21 Investor Recovery, or such portion thereof as agreed to as a compromise and  
22

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1 settlement, to the iCap Trust or until any iCap Trust Action seeking recovery of the Net  
2 Prepetition Investor Recovery is disallowed in its entirety by a Final Order.

3 **B. Claim Objections**

4 All objections to Claims shall be Filed by the iCap Trust on or before the Claim  
5 Objection Deadline, which date may be extended (a) by sixty (60) days in the discretion  
6 of the iCap Trustees without further order of the Bankruptcy Court after notice to  
7 parties who have Filed requests for notice and (b) beyond the first sixty-day extension  
8 by order of the Bankruptcy Court upon motion Filed prior to the expiration of such  
9 period and notice to parties who have Filed requests for notice. If a timely objection has  
10 not been Filed to a proof of Claim or the Schedules have not been amended with  
11 respect to a Claim that was Scheduled by the Debtors but was not Scheduled as  
12 contingent, unliquidated, or disputed, then the Claim to which the proof of Claim or  
13 Scheduled Claim relates will be treated as an Allowed Claim.

14 **C. No Distribution on Disputed Claims**

15 Notwithstanding any provision of the Plan specifying the time for payment of  
16 Distributions to Holders of Claims, no payment or Distribution shall be made to the  
17 Holder of a Disputed Claim until the time such Claim has been determined to be an  
18 Allowed Claim. Notwithstanding the existence of a Disputed Claim in a Class to which  
19 a Distribution under this Plan is due, such Distribution to other Holders in such Class  
20 shall not be affected by any delay in the resolution of the Disputed Claim. Upon the  
21 allowance of any Disputed Claim, the Holder shall be paid the amount that such Holder  
22 would have received had its Claim been an Allowed Claim on the Effective Date.

23 **D. Disposition of Reserves After Disallowance**

18 After an objection to a Disputed Claim is sustained or a Contingent Claim or  
19 Unliquidated Claim has been determined in whole or in part by a Final Order or by  
20 agreement, such that the Contingent Claim, Disputed Claim, or Unliquidated Claim is a  
21 disallowed Claim in whole or in part, any Cash held in an applicable Distribution  
22 Reserve in respect of the particular Claim in excess of the Distributions due on account  
23 of any resulting Allowed Claim shall be used or distributed in a manner consistent with  
the Plan and any reserved iCap Trust Interests shall be cancelled.

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1

**ARTICLE VIII.**  
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

2

3       The Debtors have no executory contracts or unexpired leases within the meaning  
of Bankruptcy Code section 365.

4

**ARTICLE IX.**  
**CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

5

6       **A. Occurrence of Effective Date**

7       The Effective Date shall not occur and the Plan shall not be considered  
8       consummated until each of the following conditions has either been satisfied or waived  
as set forth below in Article IX.B:

9       1. Entry of the Confirmation Order by the Bankruptcy Court in a form  
10      reasonably acceptable to both the Debtors and the Unsecured Creditors' Committee,  
11      and no request for revocation of the Confirmation Order under Bankruptcy Code  
section 1144 shall have been made, or, if made, shall remain pending;

12       2. The Confirmation Order shall have become a Final Order in full force and  
13      effect and shall not be subject to any stay of effectiveness;

14       3. The iCap Trustees shall be duly appointed, qualified, and acting in that  
15      capacity;

16       4. The iCap Trust shall have access to funding under the Exit Financing;

17       5. There shall not be in effect any (a) order, opinion, ruling, or other decision  
18      entered by any court or other Governmental Unit or (b) U.S. or other applicable law  
19      staying, restraining, enjoining, prohibiting, or otherwise making illegal the  
implementation of any of the transactions contemplated by the Plan; and

20       6. All necessary actions, agreements, instruments, or other documents to  
21      implement the terms and provisions of the Plan have been completed or executed and  
delivered, as required.

22

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1      **B. Waiver of Conditions**

2            The conditions set forth in Article IX.A of the Plan may be waived, in whole or  
3            in part, in writing by agreement of the Debtors, at any time, without notice or further  
4            order of the Bankruptcy Court.

5      **C. Non-Occurrence of Effective Date Conditions**

6            If the conditions necessary for the Effective Date are not met or duly waived as  
7            outlined in Articles IX.A and B of the Plan, upon notification filed by the Debtors with  
8            the Bankruptcy Court, the following shall occur: (i) the Confirmation Order will be  
9            vacated; (ii) no Distributions will be made; (iii) the Debtors, the Estates, the Unsecured  
10          Creditors' Committee, and all Creditors will revert to the status quo as of the day  
11          immediately preceding the Confirmation Hearing as if the Confirmation Order had not  
12          been entered; and (iv) all obligations of the Debtors and the Estates regarding Claims  
13          will remain unchanged. Nothing in the Plan will constitute a waiver or release of any  
14          Claims by or against the Debtors, the Estates, or any other Person, nor will it prejudice  
15          the rights, claims, or defenses of the Debtors, the Estates, or any other Person.

16      **D. Effective Date Notice**

17            Following the Effective Date, the iCap Trust or its representatives will promptly  
18          send notices to all Creditors and the United States Trustee. These notices will include  
19          information regarding: (i) the Confirmation Order and the Plan's Confirmation; (ii) the  
20          Effective Date; (iii) the assumption, assignment, and rejection of executory contracts  
21          and unexpired leases pursuant to the Plan, if any, along with the deadline for filing any  
22          Claims resulting from such rejection; (iv) the deadline set forth in the Plan for filing  
23          Administrative Expense Claims; (v) the deadline by which Professional Persons must  
                file and serve any requests for payment of professional fees; and (vi) any other  
                pertinent matters deemed appropriate by the iCap Trustees.

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1

**ARTICLE X.**  
**MISCELLANEOUS PROVISIONS**

2

3

**A. Mailing List**

4

5

The official listing of Creditor identities and mailing addresses is maintained by  
the Claims Agent (the “Official Mailing List”). It shall be the obligation of each  
Creditor and/or party in interest to assure that the Official Mailing List is current and  
accurate as to each such person or entity.

6

7

**B. Employment of Professional Persons**

8

9

The Debtors shall be authorized to employ and compensate Professional Persons  
following Confirmation upon such terms as the Debtors deem reasonable and  
appropriate without further notice or order of the Court.

10

**C. Payments Shall Be Timely**

11

The Debtors shall timely make all payments required under this Plan. Without  
limiting the generality of the foregoing, the iCap Trust shall be responsible for the  
timely payment of quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6) following  
Confirmation until the Case Closing Date. After Confirmation, the iCap Trust shall  
serve on the United States Trustee quarterly a financial report for each quarter (or  
portion thereof) the Chapter 11 Cases remain open. The financial report shall include a  
statement of all disbursements made during the course of the relevant quarter, whether  
or not pursuant to the Plan.

16

**D. Treatment of Negotiable Instruments**

17

Any negotiable instrument held by the Holder of a Claim shall be deemed  
exchanged, canceled, or satisfied, as the case may be, on the Effective Date.

18

**E. Stay of Confirmation Order Shall Not Apply**

19

The stay of enforceability of the Confirmation Order pursuant to Bankruptcy  
Rule 3020(e) shall not apply, and the Confirmation Order shall be enforceable  
according to its terms absent further order of the Bankruptcy Court.

22

23

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1      **F. Preservation of Privileges and Defenses**

2      The actions taken by the Debtors, the iCap Trust, or any of their respective  
3      Related Parties in connection with the Plan shall not be a waiver of any privilege or  
4      defense of the Debtors or the iCap Trust. Notwithstanding any Debtors providing any  
5      privileged information related to any iCap Trust Actions to the iCap Trustees, the iCap  
6      Trust, or any Person associated with any of the foregoing, such privileged information  
7      shall be without waiver in recognition of the joint, common, or successor interest in  
8      prosecuting the iCap Trust Actions and shall remain privileged. The iCap Trust shall  
9      retain the right to waive its own privileges. Only the iCap Trustees shall have the right  
10     to waive the attorney-client privilege, work-product doctrine, or other protections as to  
11     the Debtors and the iCap Trust.

12     **G. Releases and Related Matters**

13     On the Effective Date, for good and valuable consideration, the adequacy of  
14     which is hereby confirmed, each of the Releasing Parties shall be deemed, to the fullest  
15     extent permitted under applicable law, to have forever released, waived, and discharged  
16     each of the Released Parties from any and all claims, obligations, suits, judgments,  
17     damages, demands, debts, rights, Causes of Action, and liabilities whatsoever, whether  
18     known or unknown, whether foreseen or unforeseen, whether liquidated or  
19     unliquidated, whether fixed or contingent, whether matured or unmatured, existing or  
20     hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on  
21     any act, omission, transaction, event, or other occurrence taking place on or prior to the  
22     Effective Date in any way relating to the Debtors, the Estates, the conduct of the  
23     Debtors' businesses, the Chapter 11 Cases, or the Plan, except for acts or omissions that  
24     are determined by Final Order to have constituted actual fraud or willful misconduct;  
25     *provided, however,* that nothing in this Article X.G shall release or otherwise affect any  
26     Person's rights under the Plan or the Confirmation Order.

27     Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's  
28     approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in this Article;  
29     and (ii) the Bankruptcy Court's findings that such releases are (1) in exchange for good  
30     and valuable consideration provided by the Released Parties (including performance of  
31     the terms of the Plan), and a good-faith settlement and compromise of the released  
32     claims, (2) in the best interests of the Debtors, the Estates, and any Holders of Claims

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1       that are Releasing Parties, (3) fair, equitable, and reasonable, (4) given and made after  
2       due notice and opportunity for hearing, and (5) a bar to any of the Releasing Parties  
3       asserting any released claim against any of the Released Parties.

4

## H. Exculpation

5       On the Effective Date, for good and valuable consideration, the adequacy of  
6       which is hereby confirmed, to the maximum extent permitted by law, none of the  
7       Exculpated Parties shall have or incur any liability to any Person, including to any  
8       Holder of a Claim or an Equity Interest, for any prepetition or postpetition act  
9       or omission in connection with, relating to, or arising out of the Debtors, the Chapter 11  
10      Cases, the formulation, negotiation, preparation, dissemination, solicitation of  
11      acceptances, implementation, Confirmation, or consummation of the Plan, the  
12      Disclosure Statement, or any contract, instrument, release, or other agreement or  
13      document created, executed, or contemplated in connection with the Plan, or the  
14      administration of the Plan or the property to be distributed under the Plan, or any other  
15      postpetition act taken or omission originating or occurring in connection with or in  
16      contemplation of the restructuring, sale, or liquidation of the Debtors; *provided,*  
17      *however,* that nothing in this Article X.H shall release or otherwise affect any Person's  
rights under the Plan or the Confirmation Order; and *provided, further,* that the  
exculpation provisions of this Article X.H shall not apply to acts or omissions  
constituting actual fraud, willful misconduct, or gross negligence by such Exculpated  
Party as determined by a Final Order. This exculpation shall be in addition to, and not  
in limitation of, all other releases, indemnities, exculpations, and any other applicable  
law or rules protecting the Exculpated Parties from liability. The Confirmation Order  
shall serve as a permanent injunction against any Person seeking to enforce any Causes  
of Action against the Exculpated Parties that are encompassed by the exculpation  
provided by this Article X.H of the Plan.

18

## I. Injunction

19       Except as otherwise expressly provided in the Plan, and except in connection  
20       with the enforcement of the Plan or any documents provided for or contemplated in the  
21       Plan, all Persons who have held, hold, or may hold Claims against or Equity Interests in  
the Debtors or the Estates that (i) have been released pursuant to Article X.G of this  
22      Plan or (ii) are subject to exculpation pursuant to Article X.H of this Plan, are

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1 permanently enjoined from and after the Effective Date from: (a) commencing or  
2 continuing in any manner, directly or indirectly, any action or other proceeding of any  
3 kind against the Debtors, the Estates, or their successors and assignees, or any of their  
4 assets and property, with respect to any such Claim or Equity Interest; (b) the  
5 enforcement, attachment, collection, or recovery by any manner or means, directly or  
6 indirectly, of any judgment, award, decree, or order against the Debtors, the Estates, or  
7 their successors and assignees, or any of their assets and property, with respect to any  
8 such Claim or Equity Interest; (c) creating, perfecting, or enforcing, directly or  
9 indirectly, any Lien or encumbrance of any kind against the Debtors, the Estates, or  
10 their successors and assignees, or any of their assets and property, with respect to any  
11 such Claim or Equity Interest; (d) asserting, directly or indirectly, any setoff, or  
12 recoupment of any kind against any obligation due to the Debtors, the Estates, or their  
13 successors and assignees, or any of their assets and property, with respect to any such  
14 Claim or Equity Interest, unless approved by the Bankruptcy Court; and (e) any act, in  
15 any manner, in any place whatsoever, that does not conform to or comply with the  
16 provisions of the Plan with respect to such Claim or Equity Interest. Without limiting  
17 the foregoing, the automatic stay provided under Bankruptcy Code section 362(a) shall  
18 remain in effect until the Chapter 11 Cases are closed. Nothing contained in this Article  
19 X.I shall prohibit the Holder of a Filed proof of Claim from litigating its right to seek to  
20 have such Claim declared an Allowed Claim and paid in accordance with the  
21 distribution provisions of the Plan, or enjoin or prohibit the interpretation or  
22 enforcement by the Holder of such Claim or Equity Interest of any of the obligations of  
23 the Debtors or the iCap Trustees under the Plan. The iCap Trust shall be entitled, as  
liquidated damages, to the payment of any fees and costs incurred by the iCap Trust to  
address any violation of the injunction contained in this Article X.I.

#### 16      **J. Injunction Against Interference with the Plan**

17      Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests  
18 and their respective current and former employees, agents, officers, directors,  
19 principals, and direct and indirect affiliates shall be enjoined from taking any actions of  
20 any kind against the iCap Trustees, the iCap Trust, or any of the iCap Trust Assets that  
21 interfere with the implementation or consummation of the Plan. The iCap Trust shall be  
22 entitled, as liquidated damages, to the payment of any fees and costs incurred by the  
23 iCap Trust to address any violation of the injunction contained in this Article X.J.

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1           **K. SEC Rights**

2           Notwithstanding any language to the contrary in the Disclosure Statement, this  
3 Plan, and/or the Confirmation Order, no provision shall (i) preclude the SEC from  
4 enforcing its police or regulatory powers; or, (ii) enjoin, limit, impair, or delay the SEC  
5 from commencing or continuing any claims, Causes of Action, proceeding, or  
6 investigations against any non-Debtor Person or non-Debtor entity in any forum.

7           **L. Insurance Policies**

8           Nothing in the Plan or the Confirmation Order shall in any way operate to, or  
9 have the effect of, impairing, altering, supplementing, changing, expanding, decreasing,  
10 or modifying the rights and obligations of the Debtors (and their Estates), third party  
11 beneficiaries or named insureds, and the Debtors' insurers (and third-party claims  
12 administrators) under any of the Debtors' insurance policies (including any D&O  
13 Insurance) or modify the coverage or benefits provided thereunder or the terms and  
14 conditions thereof or diminishes or impairs the enforceability of the insurance policies.  
For all issues relating to insurance coverage, the provisions, terms, conditions, and  
15 limitations of the Debtors' insurance policies shall control. For the avoidance of  
16 doubt, nothing herein (a) constitutes a rejection of any insurance policy (including the  
17 D&O Insurance) or (b) relieves any party from any injunction or stay created or  
18 preserved under the Plan.

19           **M. Books and Records**

20           On the Effective Date, the Debtors' books and records shall be transferred to the  
21 iCap Trustees. The iCap Trustees shall be free, in their discretion to abandon, destroy,  
22 or otherwise dispose of the books and records in compliance with applicable non-  
23 bankruptcy law, or any other order of the Bankruptcy Court, at any time on and after  
the Effective Date, without the need for any other or further order; *provided, however,*  
that neither the Debtors nor the iCap Trustees shall destroy or otherwise abandon any  
books, records, electronically stored information, or other documents without providing  
advance notice to the SEC (c/o William M. Uptegrove, U.S. Securities and Exchange  
Commission, 950 East Paces Ferry Road, NE, Suite 900, Atlanta, GA 30326,  
UptegroveW@SEC.GOV), which shall have seven (7) days to object to any proposed  
destruction or abandonment, and with authorization from the Bankruptcy Court;

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1       *provided further* that, nothing in the Plan or the Confirmation Order shall affect the  
2 obligations of the Debtors, the iCap Trust, and/or any transferee or custodian to  
3 maintain any books and records that are subject to any governmental subpoena,  
4 document preservation letter, or other investigative request from a governmental  
agency.

5           In the event that the iCap Trust becomes the subject of a directive or requirement  
6 to retain any books and records, the iCap Trust may provide notice to the parties who  
7 requested or obtained such directive or requirement (the “**Document Destruction**  
8 **Notice Parties**”) of an intent to destroy such documents. In the event a Document  
9 Destruction Notice Party objects to the destruction, it shall provide the iCap Trust with  
10 a written agreement and assurance, each of which is reasonably acceptable to the iCap  
11 Trust, providing for the reimbursement and payment of all costs and expenses  
12 associated with the continued maintenance of such documents and records by the iCap  
Trust. Such costs and expenses shall include, but may not be limited to, third party fees  
and expenses, storage device costs, copying fees, the fees and expenses of counsel or  
other professionals to address any subpoenas or document production demands, and, if  
such extended maintenance precludes entry of the final decree, any fees (including U.S.  
Trustee fees) associated with such delay.

13           N.     **Severability**

14           In the event the Bankruptcy Court determines, before Confirmation, that any  
15 provision in the Plan is invalid, void, or unenforceable, the Bankruptcy Court shall have  
16 the power to alter and interpret such term or provision to make it valid or enforceable to  
17 the maximum extent practicable, consistent with the original purpose of the term or  
provision held to be invalid, void, or unenforceable, and such term or provision shall  
then be applicable as altered or interpreted. Notwithstanding any such holding,  
alteration, or interpretation, the remainder of the terms and provisions of the Plan will  
remain in full force and effect and will in no way be affected, impaired, or invalidated  
by such holding, alteration, or interpretation. The Confirmation Order shall constitute a  
judicial determination and shall provide that each term and provision of the Plan, as it  
may have been altered or interpreted in accordance with the foregoing, is: (a) valid and  
enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or  
modified without consent of the Debtors; and (c) nonseverable and mutually dependent.

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1           **O. Revocation or Withdrawal of the Plan**

2           The Debtors reserve the right to revoke or withdraw the Plan before  
3 Confirmation and to file a subsequent plan. If the Debtors revoke or withdraw the Plan  
4 before Confirmation, then the Plan shall be deemed null and void. In such event,  
5 nothing contained herein shall constitute or be deemed a waiver or release of any  
claims by or against the Debtors or to prejudice in any manner the rights of the Debtors  
in any further proceedings involving the Debtors.

6           **P. Notices**

7           All notices, requests, and demands to or upon the iCap Trustees or the Debtors,  
8 as applicable, to be effective shall be in writing and, unless otherwise expressly  
9 provided herein, shall be deemed to have been given or made when actually  
delivered and addressed as follows:

10          If to the Debtors, to:

11           iCap Enterprises, Inc. *et al.*  
12           c/o Pivot Management Group, LLC  
13           1230 Rosecrans Ave., Suite 530  
14           Manhattan Beach, CA 90266  
15           Attn: Lance Miller ([Lance.miller@pivotgrp.com](mailto:Lance.miller@pivotgrp.com))

16          With copies to:

17           O'Melveny & Myers LLP  
18           400 South Hope Street, Suite 1900  
19           Los Angeles, CA 90071  
20           Attn: Julian Gurule ([jgurule@omm.com](mailto:jgurule@omm.com))

21           and

22           O'Melveny & Myers LLP  
23           1301 Avenue of the Americas, Suite 1700  
24           New York, NY 10019

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1           Attn: Diana Perez (dperez@omm.com)

2       If to the Unsecured Creditors' Committee, to:

3           Bush Kornfeld LLP  
4           601 Union Street, Suite 5000  
5           Seattle, WA 98101

6           Attn: Armand J. Kornfeld (jkornfeld@bskd.com)  
7           Aimee S. Willig (awillig@bskd.com)  
8           Jason Wax (jwax@bskd.com)

9           and

10          Corr Cronin LLP  
11          1015 Second Ave., Floor 10  
12          Seattle, WA 98104  
13          Attn: John T. Bender (jbender@corrchronin.com)

14       If to the iCap Trustees, to:

15          Pivot Management Group, LLC  
16          1230 Rosecrans Ave., Suite 530  
17          Manhattan Beach, CA 90266  
18          Attn: Lance Miller (Lance.miller@pivotgrp.com)

19           and

20          B. Riley Advisory Services  
21          19800 MacArthur Boulevard, Suite 820  
22          Irvine, CA 92612  
23          Attn: Seth Freeman (sfreeman@brileyfin.com)

24       **Q. Exhibits/Schedules**

25       All exhibits and schedules to the Plan, including the Plan Supplement, are  
26       incorporated into and are a part of this Plan as if set forth in full herein. After the

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1 exhibits and documents are filed, copies of such exhibits and documents shall be  
2 available free of charge on the Debtors' case website at:  
3 <https://cases.creditorinfo.com/icap/documents/docket>. To the extent any exhibit or  
document is inconsistent with the terms of the Plan, unless otherwise ordered by the  
Bankruptcy Court, the Plan shall control.

4

5 **R. Successors and Assigns**

6 The rights, benefits, and obligations of any Person named or referred to in this  
7 Plan shall be binding on, and shall inure to the benefit of any heir, executor,  
administrator, successor or assign, affiliate, officer, director, agent, representative,  
attorney, beneficiaries, or guardian, if any, of each such Person.

8

9 **S. Reservation of Rights**

10 Except as expressly set forth herein, the Plan shall have no force or effect unless  
11 the Bankruptcy Court shall enter the Confirmation Order. None of the filing of this  
12 Plan, any statement or provision contained herein, or the taking of any action by any  
13 Debtor with respect to this Plan shall be or shall be deemed to be an admission or  
waiver of any rights of any Debtor with respect to the Holders of Claims or Equity  
Interest before the Effective Date.

14

15 **T. Dissolution of the Unsecured Creditors' Committee**

16 Upon the occurrence of the Effective Date, the Unsecured Creditors' Committee  
17 shall dissolve automatically, whereupon its members, professionals, and agents shall be  
18 released from any duties and responsibilities in the Chapter 11 Cases and under the  
19 Bankruptcy Code (except with respect to (a) obligations arising under confidentiality  
agreements, which shall remain in full force and effect, (b) applications for allowance  
and payment of the fees of Professional Persons, and (c) any pending motions or  
other actions seeking enforcement or implementation of the provisions of the Plan).

20

21 **U. Votes Solicited in Good Faith**

22 Upon entry of the Confirmation Order, the Debtors will be deemed to have  
23 solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code,

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1 and pursuant to Bankruptcy Code section 1125(e), the CRO, the Debtors, the  
2 Unsecured Creditors' Committee, and their respective affiliates, agents, representatives,  
3 members, principals, shareholders, officers, directors, employees, advisors, and  
4 attorneys shall have no liability for the violation of any applicable law, rule, or  
regulation governing the solicitation of votes the Plan.

5

**ARTICLE XI.**  
**SATISFACTION OF INDEBTEDNESS; PLAN IS BINDING**

6 Except as specifically provided in this Plan or in the Confirmation Order the  
7 Distributions made to the various Classes of Creditors as provided for in this Plan shall  
be in full and complete satisfaction of their Allowed Claims and Allowed Equity  
8 Interests. The terms of this Plan and the Confirmation Order shall be binding on all  
9 parties regardless of whether or not (a) the party's Claim was Scheduled, (b) a proof of  
Claim was filed, (c) the Claim is an Allowed Claim, or (d) the Holder thereof voted to  
10 accept the Plan.

11

**ARTICLE XII.**  
**MODIFICATIONS OF THE PLAN**

12 Pursuant to the provisions of Bankruptcy Code section 1127 and Bankruptcy  
13 Rule 3019, the Plan Proponents reserve the right to modify or alter the provisions of the  
Plan at any time prior to or subsequent to Confirmation. Entry of the Confirmation  
14 Order shall mean that all modifications or amendments to the Plan since the solicitation  
thereof are approved pursuant to Bankruptcy Code section 1127(a) and do not require  
15 additional disclosure or resolicitation under Bankruptcy Rule 3019.

16

**ARTICLE XIII.**  
**RETENTION OF JURISDICTION BY THE BANKRUPTCY COURT**

17

**A. Scope**

18 Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding  
19 entry of the Confirmation Order and the occurrence of the Effective Date, the  
20 Bankruptcy Court retains jurisdiction and power over all matters arising in, arising  
21 under, or related to the Chapter 11 Cases and the Plan to the fullest extent permitted by  
law, including the jurisdiction and the power to do the following:

22

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1       1. Except as otherwise Allowed pursuant to the Plan or in the Confirmation  
2 Order, Allow, classify, determine, disallow, establish the priority or secured or  
3 unsecured status of, estimate, limit, liquidate, or subordinate any Claim, in whole or in  
4 part, including the resolution of any request for payment of any Administrative  
Expense Claim and the resolution of any objections to the allowance or priority of  
Claims;

5       2. Hear and determine all applications for compensation and reimbursement  
6 of expenses of Professional Persons under the Plan or under Bankruptcy Code sections  
327, 328, 330, 331, 503(b), 1103, and 1129(a)(4);

7       3. Hear and determine all matters with respect to the assumption or rejection  
8 of any executory contract or unexpired lease to which a Debtor is a party or with  
9 respect to which a Debtor may be liable, including, if necessary, the nature or amount  
10 of any required cure or the liquidation or allowance of any Claims arising therefrom;

11       4. Effectuate performance of and payments under the provisions of the Plan  
12 and enforce remedies on any default under the Plan;

13       5. Hear and determine any and all adversary proceedings, motions,  
14 applications, and contested or litigated matters arising out of, under, or related to, the  
15 Chapter 11 Cases, including the iCap Trust Actions, and with respect to the Plan;  
provided that, for the avoidance of doubt, the iCap Trust shall be entitled to file and  
16 prosecute any litigation in any other court of competent jurisdiction;

17       6. Enter such orders as may be necessary or appropriate to execute,  
18 implement, or consummate the provisions of the Plan and all contracts, instruments,  
releases, and other agreements or documents created, executed, or contemplated in  
connection with the Plan, the Disclosure Statement, or the Confirmation Order;

19       7. Hear and determine disputes arising in connection with the interpretation,  
20 implementation, consummation, or enforcement of the Plan, including disputes arising  
under agreements (including, without limitation, the iCap Trust Agreement),  
21 documents, or instruments executed in connection with the Plan, or to maintain the  
integrity of the Plan following consummation;

22  
23       MODIFIED SECOND AMENDED  
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1           8. Consider any modifications of the Plan, cure any defect or omission, or  
2 reconcile any inconsistency in any order of the Bankruptcy Court, including the  
3 Confirmation Order;

4           9. Issue injunctions, enter and implement other orders, or take such other  
5 actions as may be necessary or appropriate to restrain interference by any Person with  
6 the implementation, consummation, or enforcement of the Plan or the Confirmation  
7 Order;

8           10. Enter and implement such orders as may be necessary or appropriate if the  
9 Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

10          11. Hear and determine any matters arising in connection with or relating to  
11 the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or  
12 any contract, instrument, release, or other agreement or document created, executed, or  
13 contemplated in connection with any of the foregoing documents and orders;

14          12. Enforce, interpret, and determine any disputes arising in connection with  
15 any stipulations, orders, judgments, injunctions, releases, exculpations,  
16 indemnifications, and rulings associated with the Plan or otherwise entered in  
17 connection with the Chapter 11 Cases (whether or not any or all of the Chapter 11  
18 Cases have been closed);

19          13. Except as otherwise limited herein, recover all Estate Assets, wherever  
20 located;

21          14. Hear and determine matters concerning state, local, and federal taxes in  
22 accordance with Bankruptcy Code sections 346, 505, and 1146;

23          15. Hear and determine such other matters as may be provided in the  
24 Confirmation Order or as may be authorized under, or not inconsistent with, the  
25 Bankruptcy Code and title 28 of the United States Code;

26          16. Enter and enforce any order and related agreements for the sale or transfer  
27 of property and obligations thereunder pursuant to, *inter alia*, Bankruptcy Code  
28 sections 363, 1123, or 1146(a);

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1           17. Enforce all orders previously entered by the Bankruptcy Court;

2           18. Resolve any cases, controversies, suits, or disputes related to the iCap  
3 Trust, the iCap Trust Supervisory Board, or the iCap Trustees;

4           19. Hear and determine all matters in connection with the iCap Trust Assets,  
5 including, without limitation, any disputes with respect to the sale of any iCap Trust  
Assets; and

6           20. Enter a final decree closing the Chapter 11 Cases of the Debtors.

7           **B. Right to Seek Bankruptcy Court Approval**

8  
9           Notwithstanding any provision in the Plan permitting actions without the  
10 approval of the Bankruptcy Court, the iCap Trustees retain the authority to present to  
11 the Bankruptcy Court any questions for explicit approval regarding specific actions  
12 proposed by the iCap Trust, including the management, distribution, or potential sale of  
13 iCap Trust Assets. The Bankruptcy Court retains jurisdiction and authority for such  
14 matters and shall approve or reject any proposed action upon motion filed by the iCap  
15 Trust.

16           **C. Non-Exercise of Bankruptcy Court Jurisdiction**

17           If the Bankruptcy Court abstains from exercising, or declines to exercise,  
18 jurisdiction or is otherwise without jurisdiction over any matter arising in, arising  
19 under, or related to the Chapter 11 Cases, including the matters set forth in this Article  
20 XIII of the Plan, the provisions of this Article shall have no effect on, and shall not  
21 control, limit, or prohibit the exercise of jurisdiction by any other court having  
22 competent jurisdiction with respect to, such matter.

23           The Bankruptcy Court shall not retain exclusive jurisdiction over disputes  
concerning documents contained in the Plan Supplement that have a jurisdictional,  
forum selection, or dispute resolution clause that refers disputes to a different court and  
any disputes concerning documents contained in the Plan Supplement that contain such  
clauses shall be governed in accordance with the provisions of such documents.

24  
25           MODIFIED SECOND AMENDED  
26           JOINT PLAN OF LIQUIDATION – Page 68

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1           RESPECTFULLY SUBMITTED this 30th day of August, 2024.

2           ICAP ENTERPRISES, INC., ET AL.

3           By /s/ Lance Miller

4           Name: Lance Miller

5           Title: Chief Restructuring Officer

6           Pivot Management Group, LLC

7           OFFICIAL UNSECURED CREDITORS' COMMITTEE

8           By /s/ Lilian Tan

9           Name: Lilian Tan

10          Title: Co-Chair of the Committee

11          By /s/ Thomas Temple

12          Name: Thomas Temple

13          Title: Co-Chair of the Committee

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23          MODIFIED SECOND AMENDED  
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**EXHIBIT B**  
**Liquidation Analysis**

ICAP ENTERPRISES, INC., ET AL.  
LIQUIDATION ANALYSIS

A chapter 11 plan cannot be confirmed unless the bankruptcy court determines that the plan is in the “best interests” of all holders of claims and interests that are impaired by the plan and that have not accepted the plan. The “best interests” test requires a bankruptcy court to find either that (i) all members of an impaired class of claims or interests have accepted the plan or (ii) the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

The Debtors have prepared this liquidation analysis (“Liquidation Analysis”), based on a hypothetical liquidation under chapter 7 of the Bankruptcy Code. It is assumed, among other things, that the hypothetical liquidation under chapter 7 would commence under the direction of a court-appointed trustee (the “Trustee”) and would continue for a period of time, during which all of the Debtors’ material assets would be sold, potential litigation claims would be settled or resolved, and the cash proceeds, net of liquidation related costs, would be distributed to Creditors in accordance with applicable law.

The Liquidation Analysis has been prepared assuming that the Debtors (i) converted to chapter 7 bankruptcy on September 23, 2024 (the “Conversion Date”) and (ii) are subject to substantive consolidation.

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Debtors’ assets in a chapter 7 case is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by the Debtors, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond the control of the Debtors, their management, and advisors. Inevitably, some assumptions in the Liquidation Analysis would not materialize in an actual chapter 7 liquidation, and unanticipated events and circumstances could affect the ultimate results in an actual chapter 7 liquidation.

THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS’ ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED IN AN ACTUAL LIQUIDATION. THIS ANALYSIS ASSUMES “LIQUIDATION VALUES” BASED ON THE DEBTORS’ BUSINESS JUDGEMENT. THE RECOVERIES SHOWN DO NOT CONTEMPLATE A SALE OR SALES OF BUSINESS UNITS ON A GOING CONCERN BASIS.

THE UNDERLYING FINANCIAL INFORMATION IN THE LIQUIDATION ANALYSIS WAS NOT COMPILED OR EXAMINED BY ANY INDEPENDENT ACCOUNTANTS. NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

The Debtors have already commenced efforts towards an orderly liquidation of their assets. In order to maximize recoveries to the Debtors' Creditors, this Liquidation Analysis assumes that the Trustee would continue those efforts as currently contemplated, spanning a six month period following the Conversion Date (the "Liquidation Period"). This Liquidation Analysis assumes that, during the Liquidation Period, the Trustee would, among other things, (i) employ one former employee for the Liquidation Period at current compensation levels, plus a stay bonus pool equal to one month of compensation, and (ii) employ professionals and advisors (including a real estate broker and tax professionals) to complete liquidation.

The Liquidation Analysis is appended hereto, and should be read in conjunction with the following notes and assumptions:

### **Summary Notes to Liquidation Analysis**

1. *Additional claims.* A liquidation under chapter 7 of the Bankruptcy Code is likely to trigger certain Claims that otherwise would not exist under the Plan. Some of these Claims could be significant and may be entitled to priority in payment over General Unsecured Claims. Those Priority Claims would be paid in full before any proceeds from liquidation would be made available to pay General Unsecured Claims or to make any distribution in respect of Equity Interests. While some of these Claims could be significant, no adjustment has been made for these potential Claims unless specified in the assumptions to the Liquidation Analysis.

2. *Dependence on unaudited financial statements.* This Liquidation Analysis is based, in part, on unaudited financial statements, which may differ from audited results.

3. *Litigation claims significantly discounted.* Pursuit of Causes of Action will require significant additional investment. Under the Plan, the Debtors will secure the benefit of an Exit Financing Facility to finance this investment, but the Exit Financing Facility will be unavailable to the Trustee. The Liquidation Analysis therefore assumes that the Trustee will seek to resolve Causes of Action through a series of settlements, following a relatively quick and efficient investigation.

4. *Distribution of net proceeds.* Priority Claims, Administrative Expense Claims, Professional fees, Trustee fees, and other such Claims that may arise in a liquidation scenario would be paid in full from the liquidation proceeds before the balance of those proceeds is made available to pay repetition priority, secured, and unsecured claims. Under the absolute priority rule, no junior Creditor would receive any distribution until all senior Creditors are paid in full, and no Holder of an Equity Interest would receive any distribution until all Creditors are paid in full. The assumed distributions to Creditors as reflected in the Liquidation Analysis are estimated in accordance with the absolute priority rule.

### **Projected Distributable Assets**

A. *Cash and Cash Equivalents.* Cash is the estimated unrestricted cash at the end of September 2024. These amounts include the benefit of amounts paid or made available to the Debtors in connection with that certain Supplemental DIP Loan from Socotra, Jason Yelowitz, and Keith Holdings.

B. Secured Claims Reserves. Secured Claims Reserves comprise amounts that the Debtors are holding or will be holding on the Effective Date in reserve accounts with respect to asserted mortgage claims encumbering real property that has been sold and liquidated. The table below in connection with Note 3 reflects the total amounts estimated for Secured Claims Reserves.

C. Real Estate Assets. The Debtors anticipate that following Confirmation of the Plan, they will either be in possession of or will have recently liquidated certain real estate properties. The table below reflects the properties anticipated to be remaining in the Debtors' possession following Confirmation of the Plan, along with the gross amount of asserted mortgage claims and the net projected value of the properties (assuming the mortgages are allowed in full). The Pioneer Village property is not included, because the Debtors expect that by the Conversion Date a settlement will have been approved with respect to that lender. The Liquidation Analysis assumes that the Trustee will expedite sales of these properties, such that the total realized values in a chapter 7 would be between 70% and 80% of current estimated value.

Property	Ch. 7 Value	Mortgage	Net
Campbell Way	162	-	162
Burien	683	300	383
Pioneer Village			-
Totals:	845	300	545

D. AR from CS2 Property. The Debtors are owed a secured loan from Debtor CS2 Real Estate Development LLC for \$2.0 million in principal amount. The Debtors believe that this loan is recoverable in full. The loan is collateral for the Debtors' current debtor in possession financing facility with Socotra REIT 1, LLC and WE Alliance Secured Income Fund, LLC, totaling \$1.61 million in principal amount.

E. Causes of Action. Pursuit of Causes of Action will require significant additional investment. Under the Plan, the Debtors will secure the benefit of an Exit Financing Facility to finance this investment, but that Exit Financing Facility will be unavailable to the Trustee. The Liquidation Analysis therefore assumes that the Trustee will seek to resolve Causes of Action through a series of settlements, following a relatively quick and efficient investigation. The Liquidation Analysis assumes that total recoveries would range between \$0 and \$15 million. It is possible, however, that recoveries in a chapter 7 could be worse (e.g., negative), after accounting for Administrative Expense Claims incurred to investigate and/or pursue the Claims in an expedited fashion.

## Chapter 7 Administrative Expenses

F. Wind-Down Expenses. The Liquidation Analysis assumes that the Trustee will continue with existing liquidation and wind-down plans that have already commenced. Wind-down efforts are anticipated to extend for a 6-month period. Material expenses include \$30,000 for document retention costs, and \$95,000 for payroll-related expenses to retain a former employee for support in pursuing the wind-down, understanding the Debtors' pre-petition activities, and completing an investigation of Causes of Action.

G. Trustee Fees. Trustee fees are calculated according to section 326 of the Bankruptcy Code.

H. Legal and Financial Advisors. The Liquidation Analysis includes amounts for the Trustee to retain outside advisors for purposes of aiding in the wind-down and completing a cursory investigation of Causes of Action. These fees are estimated to range between \$500,000 and \$600,000.

### Projected Distributions

1. DIP Claims. The Debtors' current debtor in possession claims total \$2.06M in principal amount, secured by substantially all of the Debtors' assets. This total includes \$300,000 owed under the Debtors' first DIP facility with Serene; this balance is proposed to be waived or otherwise addressed under a settlement with Serene, but the Liquidation Analysis assumes that the settlement will not go forward in the event of a conversion to chapter 7. These amounts will be senior to any recoveries in a chapter 7.

2. Administrative Expense Claims. Administrative Expense Claims are equal to projected unpaid fees and expenses for Professional Persons prior to the Effective Date.

3. Class 2: Secured Claims. The table below reflects assumed amounts for Class 2 Secured Claims. As discussed, certain Claims are anticipated to be worth less than their filed amounts, due to available Collateral values. Secured Claims with respect to the CS2 Property are not included, because the Debtors anticipate that the CS2 Property will be sold, and the attendant Secured Claims will be extinguished, prior to entry of the Confirmation Order.

Creditor	SubClass Ref.	Collateral	(in \$000's) POC/Scheduled Amt.	(in \$000's) Reserved Amt.	Notes
Studio 19 Architects	Class 2A.1	UW 17th	52	52	
Davido Consulting Grp	Class 2A.2	UW 17th	18	18	Amt. reserved is the remaining balance from collateral, following payment of the Serene DIP and senior liens.
Dhillons	Class 2A.3	UW 17th	1,120	668	
Wilmington Savings	Classes 2B/2C	14th Street/Willows	5,175	5,155	Amt. is total proceeds from collateral
Redmond Funding	Class 2D	Lynnwood/Burien	1,798	1,757	Reserve is full proceeds from Lynnwood sale
Christopher Jones Archi	Class 2E.1	Broadway	- -	-	Under the Plan, Broadway will be abandoned.
Davido Consulting Grp	Class 2E.2	Broadway	-	-	See note above re Broadway
Malsam Tsang Engineer	Class 2E.3	Broadway	12	-	See note above re Broadway
Davido Consulting Grp	Class 2E.4	Broadway	-	-	See note above re Broadway
Oak Hills Construction	Class 2E.5	Broadway	197	-	See note above re Broadway
Van Hoof Construction	Class 2F.2	Senza Kenmore	9	-	No collateral proceeds remaining, following repayment of DIP
Dance Construction	Class 2F.3	Senza Kenmore	52	-	No collateral proceeds remaining, following repayment of DIP
Davido Consulting Grp	Class 2G.1	Campbell	15	15	
Tritalent	Class 2H.1	Pioneer Village	2,103	-	Settlement with Tritalent will govern
<b>Totals:</b>			<b>10,550</b>	<b>7,664</b>	

4. Class 3 Investor Claims and Class 4 General Unsecured Claims. For purposes of the Liquidation Analysis, the Debtors estimate Claims in these Classes based on the total face amount of proofs of Claim and/or Scheduled Claims. These estimates do not include the benefit of a review of the underlying Claims, and the estimates for Claims in Class 3 and Class 4 may overlap.

(000's) Gross Liquidation Proceeds:		Notes	Est. Balance Sheet 9/30/2024	\$	Low	%	\$	High	%
Cash and cash equivalents - Unrestricted	A	\$ \$	425	\$ 425	100%	\$ 425	425	100%	
Real Estate Cash Reserves	B	\$ \$	7,664	\$ 7,664	100%	\$ 7,664	7,664	100%	
Real Estate Assets Owned	C	\$ 545	-	\$ 381	70%	\$ 436	436	80%	
AR from CS2 Property	D	\$ 2,000	-	\$ 1,400	70%	\$ 1,600	1,600	80%	
Causes of Action							\$ 15,000		
<b>TOTAL GROSS LIQUIDATION PROCEEDS</b>			<b>\$ 10,634</b>	<b>\$ 9,871</b>			<b>\$ 25,125</b>		
(-) Wind-Down Expenses	E				(112)			(89)	
(-) Trustee Fees	E				(296)			(754)	3%
(-) Legal & Financial Advisors	E				(600)			(500)	
<b>TOTAL NET LIQUIDATION PROCEEDS</b>				<b>\$ 8,863</b>			<b>\$ 23,782</b>		

#### Claims Recovery Analysis (in \$000s)

Class	Claims	Notes	Claims Estimate	\$	Low Recovery Estimate	%	\$	High Recovery Estimate	%
DIP Claims	1	1	2,060	1,199	58%	58%	2,060	2,060	100%
Administrative Expenses	2	2	6,383	-	0%	0%	6,383	6,383	100%
1 Priority Claims			-	-	100%	100%	-	-	100%
2 Secured Claims	3	3	7,664	7,664	100%	100%	7,664	7,664	100%
3 Investor Claims	4	4	284,328	1,194	0%	0%	7,645	7,645	3%
4 General Unsecured Claims			1,126	5	0%	0%	30	30	3%
5 Subordinated Claims			-	(0.00)	0%	0%	-	-	0%
6 Equity Interests			-	-	0%	0%	-	-	0%

#### Best Interests of Creditors Analysis

Class	Claims	Claim Amt.	Liquidation Analysis			Plan Recovery Projections		
			\$ Low	%	\$ High	%	\$ Median	%
DIP Claims	1,760	2,060	1,199	58%	2,060	100%	1,760	100%
Administrative Expenses	6,383	-	6,383	0%	6,383	100%	6,383	100%
1 Priority Claims			-	100%	3,192	50%	-	100%
2 Secured Claims	7,664	7,664	100%	-	7,664	100%	7,664	100%
3 Investor Claims	284,328	1,194	7,645	3%	4,419	2%	2,534	1%
4 General Unsecured Claims		5	30	3%	17	2%	10	1%
5 Subordinated Claims		(0)	-	0%	(0)	0%	-	0%
6 Equity Interests		-	-	0%	-	0%	-	0%

BIC Test	PASS
PASS	PASS

**EXHIBIT C**

**Recovery Analysis**

**ICAP ENTERPRISES, INC., ET AL.**  
**PLAN RECOVERY ANALYSIS**

<i>(000's)</i> <b>Gross Proceeds:</b>	<b>Notes</b>	<b>Est. Balance Sheet 9/30/2024</b>	<b>Low</b>		<b>High</b>		
			<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>	
Cash and cash equivalents - Unrestricted	A	\$ 425	\$ 425	100%	\$ 425	100%	
Real Estate Cash Reserves	B	\$ 7,664	\$ 7,664	100%	\$ 7,664	100%	
Exit Financing		\$ 4,750	\$ 4,750	100%	\$ 4,750	100%	
Real Estate Assets Owned	C	545	436	80%	545	100%	
AR from CS Property	D	1,000	1,000	100%	1,000	100%	
Causes of Action	E	25,000			125,000		
<b>TOTAL GROSS LIQUIDATION PROCEEDS</b>		<b>\$ 14,384</b>	<b>\$ 39,275</b>		<b>\$ 139,384</b>		
(-) Trust Expenses	F		(578)			(578)	
(-) Trustee Fees	G		(1,250)			(6,250)	
(-) Exit Facility Repayments			(8,418)			(8,418)	
(-) Legal & Financial Advisors	H		(1,680)			(1,680)	
<b>TOTAL NET LIQUIDATION PROCEEDS</b>		<b>\$ 27,349</b>			<b>\$ 122,458</b>		
<b>Claims Recovery Analysis (in \$000s)</b>							
<b>Class</b>	<b>Claims</b>	<b>Notes</b>	<b>Claims Estimate</b>	<b>Low Recovery Estimate</b>	<b>High Recovery Estimate</b>		
			<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>	
Exit Facility Claims	1		9,588	9,588	100%	9,588	100%
Administrative Expenses	2		6,383	6,383	100%	6,383	100%
1 Priority Claims			-	-	100%	-	100%
2 Secured Claims	3		7,664	7,664	100%	7,664	100%
3 Investor Claims	4		284,328	2,534	1%	97,268	34%
4 General Unsecured Claims	4		1,126	10	1%	385	34%
5 Subordinated Claims			-	-	0%	-	0%
6 Equity Interests			-	-	0%	-	0%

**NOTES**

**Assets**

- A. **Cash and Cash Equivalents.** Cash is the estimated unrestricted cash at the end of September 2024. These amounts include the benefit of amounts paid or made available to the Debtors in connection with that certain Supplemental DIP Loan from Socotra, Jason Yelowitz, and Keith Holdings. Amounts also assume the benefit of an anticipated settlement with Tritalent, which would provide an additional \$500,000 in exit financing.
- B. **Secured Claims Reserves.** Secured Claims Reserves comprise amounts that the Debtors are holding or will be holding on the Effective Date in reserve accounts with respect to asserted mortgage claims encumbering real property that has been sold and liquidated. The table below in connection with Note 2 reflects the total amounts estimated for Secured Claims Reserves.
- C. **Real Estate Assets.** The Debtors anticipate that following Confirmation of the Plan, they will either be in possession of or will have recently liquidated certain real estate properties. The table below reflects the properties anticipated to be remaining in the Debtors' possession following Confirmation of the Plan, along with the gross amount of asserted mortgage claims and the net projected value of the properties (assuming the mortgages are allowed in full). To the extent that any of these properties are instead liquidated prior to entry of the Confirmation Order, the mortgage amounts will be placed in a reserve account and the net amounts will be available for use by the iCap Trust. Estimated values are based

on the Debtors' best current estimates, net of transaction costs. For purposes of the recovery analysis, the Debtors assume that in a low recovery scenario, ultimate sales values are 80% of current estimates.

Property	Ch. 7 Value	Mortgage	Net
Campbell Way	162	-	162
Burien	683	300	383
Pioneer Village			-
Totals:	845	300	545

- D. AR from CS2 Property. The Debtors are owed a secured loan from Debtor CS2 Real Estate Development LLC for \$2.0 million in principal amount. The Debtors believe that this loan is recoverable in full. The recovery analysis assumes a value of \$1.0 million, with the other \$1.0 million being used to pay Socotra REIT 1, LLC and WE Alliance Secured Income Fund, LLC as part of an exit facility.
- E. Causes of Action. As with any litigation, the ultimate recoveries on Causes of Action pursued by the iCap Trust are uncertain. The recovery analysis estimates a range of \$25 million to \$125 million. This range is for illustrative purposes only. The Debtors believe that the Causes of Action may ultimately be worth significantly more than \$125 million, but developing and pursuing those claims will depend on myriad variables (including discovery and evidence not yet reviewed or received) that cannot be fully accounted for at this time.

### **iCap Trust Costs and Expenses**

- F. iCap Trust Expenses. The table below summarizes estimated expenses for the iCap Trust. Among other things, the Debtors estimate that the iCap Trust will operate for 24 months.

Assumed Duration (Mos):	24
<u>Monthly Carry Costs</u>	
Monthly Doc Retention Costs:	3,000
Consultant Costs:	13,600
Subtotal:	16,600
Director Monthly Costs:	7,500
Total Carry Costs:	<b>578,400</b>

- G. iCap Trustees Fees. Under the Plan, the iCap Trustees will receive compensation equal to 5.0% of the iCap Trust's total gross recoveries.
- H. Professionals Fees. Professional fee expenses include costs for (i) a financial advisor to complete a claims review process and to support investigation needs, and (ii) a general counsel to support day-to-day iCap Trust operations, including responding to governmental inquiries and discovery needs. Actual fees may vary significantly from estimates. Estimates are for illustrative purposes only.

## **Recoveries/Distributions**

1. **Exit Facility.** The Debtors anticipate a total exit facility balance of \$9.5M, assuming amounts are paid by their maturity date. These amounts will be secured by litigation proceeds, and will therefore be paid before other recoveries.
2. **Administrative Expense Claims.** Administrative Expense Claims are equal to projected unpaid fees and expenses for Professional Persons prior to the Effective Date.
3. **Class 2: Secured Claims.** The table below reflects assumed amounts for Class 2 Secured Claims. As discussed, certain Claims are anticipated to be worth less than their filed amounts, due to available Collateral values. Secured Claims with respect to the CS2 Property are not included because the Debtors anticipate that the CS2 Property will be sold, and the attendant Secured Claims will be extinguished, prior to entry of the Confirmation Order. Secured Claims also do not include amounts owed to Serene under its existing DIP Facility, with the anticipation that a settlement with Serene will be approved that resolves the Claim.

Creditor	SubClass Ref.	Collateral	(in \$000's) POC/Scheduled Amt.	(in \$000's) Reserved Amt.	Notes
Studio 19 Architects	Class 2A.1	UW 17th	52	52	
Davido Consulting Grp	Class 2A.2	UW 17th	18	18	
Dhillons	Class 2A.3	UW 17th	1,120	668	Amt. reserved is the remaining balance from collateral, following payment of the Serene DIP and senior liens.
Wilmington Savings	Classes 2B/2C	14th Street/Willows	5,175	5,155	Amt. is total proceeds from collateral Reserve is full proceeds from Lynnwood sale
Redmond Funding	Class 2D	Lynnwood/Burien	1,798	1,757	Under the Plan, Broadway will be abandoned.
Christopher Jones Archi	Class 2E.1	Broadway	-	-	See note above re Broadway
Davido Consulting Grp	Class 2E.2	Broadway	-	-	See note above re Broadway
Malsam Tsang Engineer	Class 2E.3	Broadway	12	-	See note above re Broadway
Davido Consulting Grp	Class 2E.4	Broadway	-	-	See note above re Broadway
Oak Hills Construction	Class 2E.5	Broadway	197	-	See note above re Broadway
Van Hoof Construction	Class 2F.2	Senza Kenmore	9	-	No collateral proceeds remaining, following repayment of DIP
Dance Construction	Class 2F.3	Senza Kenmore	52	-	No collateral proceeds remaining, following repayment of DIP
Davido Consulting Grp	Class 2G.1	Campbell	15	15	
Tritalent	Class 2H.1	Pioneer Village	2,103	-	Settlement with Tritalent will govern
<b>Totals:</b>			<b>10,550</b>	<b>7,664</b>	

4. **Class 3 Investor Claims and Class 4 General Unsecured Claims.** For purposes of the recovery analysis, the Debtors estimate Claims in these Classes based on the total face amount of proofs of Claim and/or Scheduled Claims. These estimates do not include the benefit of a review of the underlying Claims, and the estimates for Claims in Class 3 and Class 4 may overlap.